

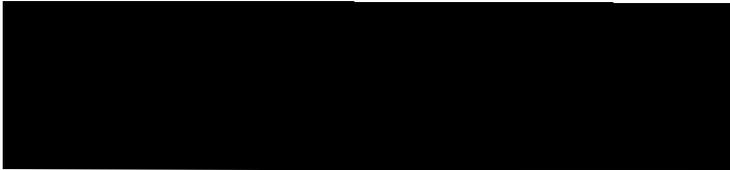
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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:

MSC 05 270 10636

Office: NATIONAL BENEFITS CENTER

Date: **MAY 02 2008**

IN RE:

Applicant:



APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, you no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case.

for Robert P. Wiemann, Chief
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for temporary resident status pursuant to the terms of the settlement agreements reached in *Catholic Social Services, Inc., et al., v. Ridge, et al.*, CIV. NO. S-86-1343-LKK (E.D. Cal) January 23, 2004, and *Felicity Mary Newman, et al., v. United States Immigration and Citizenship Services, et al.*, CIV. NO. 87-4757-WDK (C.D. Cal) February 17, 2004 (CSS/Newman Settlement Agreements), was denied by the Director, National Benefits Center. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant submitted a Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (Act), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, on June 27, 2005 (together, the I-687 Application). The director determined that the petitioner did not provide final court dispositions for criminal charges filed against the petitioner on April 21, 1990 (Charge – “CPSP 4”, and “Criminal possession weapon”), and denied the petitioner’s application.

The AAO renders its decision here upon a *de novo* review of the entire record.

On appeal, the petitioner states that he was arrested on April 2, 1990, but denies that he was arrested on April 21, 1990 on the charges of “CPSP 4” and “criminal possession weapon” as stated by the director in his decision denying the Form I-687. The petitioner states that there is no record of the “CPSP 4” charge, or the “criminal possession weapon” charge on the date noted by the director. The AAO independently considered all the evidence and independently applied the relevant regulations to the evidence.

The first issue to be considered is whether the petition may be denied because the applicant failed to provide final court dispositions for criminal charges filed against the petitioner on April 21, 1990 (Charge – “CPSP 4”, and “Criminal possession weapon”).

An applicant who has been convicted of a felony or three or more misdemeanors in the United States is ineligible for adjustment to temporary resident status under the provisions of the LIFE Act. Section 1104 (c)(2)(D)(ii) of the LIFE Act; 8 C.F.R. §§ 245a.11(d)(1) and 18(a)(1). The regulations provide relevant definitions at 8 C.F.R. § 245a.

“Misdemeanor” means a crime committed in the United States, either (1) punishable by imprisonment for a term of one year or less, regardless of the term actually served, if any; or (2) a crime treated as a misdemeanor under 8 C.F.R. § 245a.1(p). For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor. 8 C.F.R. § 245a.1(o).

The term 'conviction' means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where - (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

Section 101(a)(48)(A) of the Immigration and Naturalization Act (Act), 8 U.S.C. § 1101(a)(48)(A).

The record contains court documents that reflect that the applicant has been convicted of the following misdemeanor offenses in the Supreme Court of the State of New York, New York County, New York, NY:

- Court arrest/case number arrest date April 2, 1990, for a violation of PL 140.10 (criminal trespass in the third degree), with a conviction date of October 1, 1990; and
- Court arrest/case number arrest date May 21, 1993, for a violation of PL 170.20 (criminal possession of a forged instrument in the third degree), with a conviction date of March 1, 1994.

The applicant's RAP sheet notes that other charges were filed in conjunction with the above mentioned court cases. The only convictions resulting from these arrests, however, are those listed above. The April 21, 1990 arrest date listed by the director in his decision of March 22, 2006, for the charges of "CPSP 4" and "criminal possession weapon," was listed in error by the director as the record does not establish any such arrest on that date. The applicant was charged with those offenses concurrent with his arrest on April 2, 1990, and the offenses were disposed of by the above referenced guilty plea to the misdemeanor charge of criminal trespass in the third degree. The record establishes that the applicant has two criminal misdemeanor convictions. Two misdemeanor convictions do not render the applicant ineligible pursuant to 8 C.F.R. § 245a.11(d)(1) and 8 C.F.R. § 245a.18(a).

The final issue to be considered is whether the applicant established residency requirements in the United States during the time periods required for Legalization.

An applicant for temporary resident status must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and through the date the application is filed. Section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2). The applicant must also establish that he or she has been continuously physically present in the United States since November 6, 1986. Section 245A(a)(3) of the Act, 8 U.S.C. § 1255a(a)(3). The regulations clarify that the applicant must have been physically present in the United States from November 6, 1986 until the date of filing the application. 8 C.F.R. § 245a.2(b)(1).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "until the date of filing" shall mean until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file during the original legalization application period of May 5, 1987 to May 4, 1988. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

The applicant has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.2(d)(5).

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that "[t]ruth is to be determined not by the quantity of evidence alone but by its quality." *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true. *See* 8 C.F.R. § 245a.2(d)(6). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The credibility of an affidavit may be assessed by taking into account such factors as the extent of detail provided by the affiant concerning his or her contact with the applicant during the periods in question, the nature and scope of any verifiable events specified in the applicant's statement, and identification of persons or organizations that may corroborate the statement. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

Even if the director has some doubt as to the truth, if the applicant submits relevant, probative, and credible evidence that leads the director to believe that the claim is "probably true" or "more likely than not," the applicant or petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (defining "more likely than not" as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

The present issue is whether the applicant has furnished sufficient credible evidence to establish his continuous unlawful residence and continuous physical presence in the United States for the requisite periods noted above. Here, the submitted evidence consists of the following:

- A copy of the first five pages of the applicant's passport;

This documentation indicates that the applicant's passport (Lebanon) was issued on March 28, 1963, and that it expires on July 26, 2009. The passport documentation submitted does not contain date stamps or official notations establishing arrival or departure dates for the applicant to or from the United States, or any other country. The passport documentation, therefore, provides no relevant, probative, or credible evidence establishing the applicant's continuous unlawful residence and continuous physical presence in the United States for the requisite periods noted above.

- A sworn affidavit from [REDACTED] dated February 27, 2006;
The affiant's sworn statement indicates that he has known the applicant since 1981. The affidavit provides no other information. It is, therefore, of little evidentiary value as it does not provide relevant, probative, or credible evidence establishing the applicant's continuous unlawful residence and continuous physical presence in the United States for the requisite periods noted above. For

example, the affidavit does not establish: in what country the affiant met the applicant; when the affiant came to the United States or how long he has been in the United States; when and/or how the applicant first came to the United States; or if the affiant is aware of the applicant's whereabouts since 1981, and if so, how he was aware of the applicant's whereabouts.

- A notarized statement from [REDACTED] dated February 24, 2006;

The notarized statement indicates that [REDACTED] has known the applicant since 1981, that he lived with him in New York as a roommate until 1998, and that he then moved to another location with the applicant in New York. Again, the statement is of little evidentiary value as it does not provide relevant, probative, or credible evidence establishing the applicant's continuous unlawful residence and continuous physical presence in the United States for the requisite periods noted above, and is unclear as to whether "year 1981" refers to when the applicant first met the affiant, or when the affiant and the applicant first began living together. The statement does not establish: in what country [REDACTED] first met the applicant; when [REDACTED] first came to the United States or how long he has been in this country; when [REDACTED] first began living with the applicant as a roommate; or that [REDACTED] was aware of the applicant's whereabouts from 1981 until he began living with him as a roommate.

The documentation detailed above comprises the only documentation provided by the applicant as evidence of his residence in the United States for the requisite period. This evidence is insufficient to support a conclusion that the applicant entered the United States before January 1, 1982 and resided in the United States for the requisite period. The record lacks any document that might lend credibility to the applicant's claim of entry and residence in the United States for the required time period.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period detracts from the credibility of his claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the paucity of credible supporting documentation and the applicant's reliance upon one sworn statement and one notarized statement, documents with minimal probative value for the reasons stated above, it is concluded that he has failed to meet his burden of proof and failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application, as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M--*, *supra*. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis. The appeal will be dismissed.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.