



U.S. Citizenship
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Services

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FILE: [REDACTED]
MSC-05-193-11443

Office: LOS ANGELES

Date: **SEP 04 2008**

IN RE: Applicant: [REDACTED]

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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 District Director, Los Angeles. 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. The director determined that the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status for the duration of the requisite period. The director denied the application, finding that the applicant had not met his burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, the applicant asserts his claim of residence in the United States since before January 1, 1982, and he submits additional evidence.

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).

For purposes of establishing residence and physical presence under the CSS/Newman Settlement Agreements, the term “until the date of filing” in 8 C.F.R. § 245a.2(b) means 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. See 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 period, 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.* at 80. 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.

Even if the director has some doubt as to the truth, if the petitioner 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, 431 (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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on April 11, 2005.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted the following attestations:

- A letter dated October 17, 2005 from [REDACTED] in which he stated that he has known the applicant since May of 1982 and that he is still associated with him. In response to the director's Request for Evidence the applicant submitted an affidavit dated October 28, 2005 from [REDACTED] in which he stated that he has known the applicant since 1981 and that he is still associated with him. The declarant's attestations are contradictory to each other and therefore can be afforded little weight in establishing the applicant's residency in the United States during the requisite period.
- A letter dated October 13, 2005 from [REDACTED] in which he stated that he has known the applicant since 1982 and that shortly after meeting him he rented a room in his house to the applicant at [REDACTED], Compton, California for one year. He also stated that he and the applicant have been friends since. In response to the director's

Request for Evidence the applicant submitted an affidavit dated October 30, 2005 from [REDACTED] in which he stated that he has known the applicant since 1981 and that he rented a room to the applicant at his residence in Compton, California shortly after meeting him. The declarant's attestations are contradictory to each other and therefore can be afforded little weight in establishing the applicant's residency in the United States during the requisite period.

In denying the I-687 application, the director noted that the attestations were contradictory to each other and therefore not credible.

On appeal, the applicant asserts that [REDACTED] did not make up dates but was unable to remember the years in which he met friends. He further states that he came to the United States and has been residing in the country since September of 1981.

The applicant submits the following attestations on appeal:

- A letter dated March 31, 2006 from [REDACTED] in which he states that he has known the applicant since 1981 and that he is still associated with him. He attached a copy of his California driver license. Here, the declarant fails to indicate under what circumstances he met the applicant, the frequency with which he saw the applicant, or any other detail that would lend credence to his claimed knowledge of the applicant and the applicant's residence in the United States during the requisite period. Because the declaration is significantly lacking in detail, it can be afforded only minimal weight in establishing that the applicant resided in the United States during the requisite period.
- A letter dated March 31, 2006 from [REDACTED] in which he states that he has known the applicant since 1981 and that he is still associated with him. He attached a copy of his California driver license. Here, the declarant fails to indicate under what circumstances he met the applicant, the frequency with which he saw the applicant, or any other detail that would lend credence to his claimed knowledge of the applicant and the applicant's residence in the United States during the requisite period. Because the declaration is significantly lacking in detail, it can be afforded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

In the instant case, for the reasons noted above, the applicant has failed to provide sufficient credible and probative evidence to establish his continuous unlawful residence in the United States since prior to January 1, 1982, and throughout the requisite period. The applicant has failed to overcome the director's basis for denial.

The contradictions noted above, and the absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, seriously detract from the credibility of this 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 inconsistencies in the record and the

applicant's reliance upon documents with minimum probative value, it is concluded that he has failed to establish by a preponderance of the evidence continuous residence in an unlawful status in the United States for the requisite period, 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.

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