



U.S. Citizenship  
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FILE: [REDACTED]  
MSC-06-025-13105

Office: BOSTON

Date: SEP 16 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.

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, Boston. 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 she 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 her 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 that she has been in the United States since prior to January 1, 1982. The applicant states that she submitted affidavits of persons who knew her. The applicant states that she left the United States around November 1983 because of a family matter and her pregnancy. The applicant states that she returned soon after she had her baby.

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. 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 her 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 on October 25, 2005. At part #30 of the Form I-687 application where applicants are asked to list all residences in the United States since first entry, the applicant showed that during the requisite period she resided in Lynn, Massachusetts from March 1983 until April 1986 and Chelesa, Massachusetts from April 1986 until February 2001. At part #33 of the application where applicant’s are asked to list their employment in the United States since entry, the applicant showed that she has been self employed in maintenance since 1981. The applicant left blank the section of the application that requests her to list her occupation and location of employment. The applicant’s failure to fully complete this part of the application draws into question the overall credibility of her claim of continuous residence in the United States during the requisite period.

On November 22, 2005, the director, National Benefits Center, issued a Notice of Intent to Deny (NOID) to the applicant. The NOID provides that the applicant failed to submit documentation to establish her eligibility for temporary resident status. The applicant was afforded 30 days to

submit additional evidence in response to the NOID. Pursuant to 8 C.F.R. § 245a.2(d)(6), to meet her burden of proof, an applicant must provide evidence of eligibility apart from her own testimony. The regulations at 8 C.F.R. § 245a.2(d)(3) provide an illustrative list of contemporaneous documentation that may be furnished to establish proof of continuous residence in the United States during the requisite period. This list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts, or letters. The applicant failed to provide any of these documents in support of her claim of continuous residence in the United States.

An applicant may also submit “any other relevant document.” 8 C.F.R. § 245a.2(d)(3)(vi)(L). In response to the NOID, the applicant submitted her own declaration and a notarized statement from [REDACTED]. The applicant’s declaration provides that she entered the United States in December 1981. The declaration states that she has continuously resided in an unlawful status until March 1988 when she was turned away from legalization by an officer at the Boston District Office. The declaration states that she has been continuously in the United States with brief absences of less than six months.

The statement from [REDACTED] provides that [REDACTED] first met the applicant on December 24, 1981 at a Christmas Eve gathering in Lynn, Massachusetts. The statement provides, “. . . when they moved to Chelsea I visited them. We have kept in touch. I work with her husband. We get together once in a while. I have met their children.” This statement fails to establish [REDACTED] relationship with the applicant in the United States during the requisite period. It does not convey how frequently [REDACTED] was in contact with the applicant during the requisite period. Nor does it provide any details on the type of contact they maintained. Given this deficiency, this affidavit is of little probative value as evidence of the applicant’s residence in the United States during the requisite period.

On January 26, 2007, the director issued a notice to deny the application. In denying the application, the director noted that during the applicant’s interview she testified that she departed the United States in November 1983 to travel to Brazil. The director noted that the applicant testified she returned to the United States in January 1984 after she gave birth to her first child. The director found that this absence was in excess of 45 days. The director determined that the applicant failed to meet the residency requirement for temporary resident status and was absent from the United States for more than 45 days during the period from January 1, 1982 through May 4, 1988.

On appeal, the applicant asserts that she has been in the United States since prior to January 1, 1982. The applicant states that she submitted affidavits of persons who knew her. The applicant states that she left the United States around November 1983 because of a family matter and her pregnancy. The applicant states that she returned soon after she had her baby.

According to 8 C.F.R. § 245a.2(h)(1), an applicant for temporary resident status shall be regarded as having resided continuously in the United States if, at the time of filing of the application, no single absence from the United States has exceeded 45 days, and the aggregate of all absences has not exceeded 180 days between January 1, 1982 through the date the application for temporary resident status is filed, unless the applicant can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed. In this case, the record does not show the exact dates of the applicant's absence from the United States. The director's decision and the officer's interview notes only indicate that the applicant was absent from November 1983 until January 1984. Without the exact dates of absence, it is not possible to determine whether this period exceeded 45 days. Therefore, this part of the decision is withdrawn. Nevertheless, the director's actions must be considered to be harmless error as the AAO conducts a de novo review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(d)(6).

The applicant has not provided sufficient evidence to establish that she entered the United States prior to January 1, 1982. Nor has she provided sufficient evidence to establish that she has resided in the United States during the requisite period. The applicant has been given the opportunity to satisfy her burden of proof with a broad range of evidence. See 8 C.F.R. § 245a.2(d)(3). However, she submitted as corroborating evidence of her residence in the United States during the requisite period only one notarized statement that is of little probative value. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability verification. 8 C.F.R. § 245a.2(d)(5). Given the lack of supporting documentation, it is concluded that she has failed to establish by a preponderance of the evidence that she has continuously resided 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.