



U.S. Citizenship
and Immigration¹
Services

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FILE:

[REDACTED]
MSC 06 063 11142

Office: NEW YORK

Date: **DEC 02 2009**

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:

[REDACTED]

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.

Perry Rhew
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, New York. 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, and that the evidence submitted by him did not establish his eligibility for the immigration benefit sought. 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. Specifically, the director noted that the witness statements submitted in support of the applicant's claim lack sufficient detail to establish the applicant's residence in the United States for the duration of the requisite period. The director also noted further deficiencies in evidence submitted by the applicant in support of his application.

On appeal, counsel submits a brief stating that the evidence submitted by the application in support of his claim is sufficient to sustain his claim for benefits.

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 245(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).

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)(1) 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). To meet his or her burden of proof, an applicant

must provide evidence of eligibility apart from his or her own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

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.

The issue in this proceeding is whether the applicant (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. The record contains the following evidence which is material to the applicant's claim:

- The applicant submitted affidavits from [REDACTED] in support of his application. The affidavits are general in nature and state that the affiants have knowledge of the applicant's residence in the United States for all, or a portion of, the requisite period.

As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. The affidavits provided do not provide detailed evidence establishing how the affiants knew the applicant, the details of their association or relationship, or detailed accounts of an ongoing association establishing a relationship under which the affiants could be reasonably expected to have personal knowledge of the applicant's residence, activities and whereabouts during the requisite period covered by the applicant's Form I-687. To be considered probative, affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. The statements must contain sufficient detail, generated by the

asserted contact with the applicant, to establish that a relationship does in fact exist, how the relationship was established and sustained, and that the affiant does, by virtue of that relationship, have knowledge of the facts asserted. The affidavits submitted by the applicant, therefore, are not deemed probative and are of little evidentiary value.

The record contains additional evidence in support of the applicant's claim:

- The applicant submitted photographs of the applicant in New York. One of the photographs (of the applicant and an acquaintance in front of what appears to be the New York skyline) contains a print generated date of September 17, 1985. The remaining photographs do not have print generated dates, but the applicant states that they were taken of him in New York (1981) during the requisite period. The photographs are not probative.
- The applicant submitted what appears to be an original of a prescription for medication in the applicant's name on a prescription pad with the letterhead of [REDACTED]. The prescription is dated January 20, 1981. It is unclear why the applicant would have the original prescription. The prescription is of little evidentiary value as it is not supported by a statement from [REDACTED] attesting to his treatment of the applicant and the writing of the prescription, nor is the prescription supported by copies of medical records.
- The applicant submitted a [REDACTED] report dated April 2, 1984 with the applicant's name hand written as the customer, listing an address of [REDACTED]. The city and state are not included. The report is of little probative value as it is not subject to verification. The director noted in a Notice Of Intent To Deny (NOID) that evidence of the existence of [REDACTED] could not be obtained.
- The applicant submitted a receipt from [REDACTED] dated June 6, 1988. The record does not establish that the receipt was issued to the applicant.
- The applicant submitted a [REDACTED] repair claim check which has a hand written October 2, 1986 pick up date on the reverse side of the card. The claim check is of no probative value as it does not reference the applicant in any manner.
- The applicant submitted a [REDACTED] membership card containing an October 20, 1983 membership date. The director noted in her decision denying the applicant's claim that the New York Department of State, Division of Corporations, states that [REDACTED] began doing business on May 17, 1985. The membership card, therefore, is not deemed credible and is of no evidentiary value.
- The applicant submitted a statement from [REDACTED] Interiors, wherein Mr. [REDACTED] states that the applicant served an internship with his organization from January 1, 1984 until April 2, 1984. The statement is neither sworn to nor notarized, and does not attest to the applicant's residence in the United States during any portion of the requisite period.

- The applicant submitted a 1988 [REDACTED] Card with the applicant's name hand written on the back of the card. The card contains no supporting documentation such as dues receipts or records of donation to the association. The card does not provide the applicant's address nor does it attest to the applicant's residence in the United States. The document is of little probative value.
- The applicant submitted a Federation of Police membership receipt dated October 4, 1988. The receipt was issued to a business, not the applicant, and is of no probative value in these proceedings.

The only other evidence submitted by the applicant in support of his application are his personal assertions. The applicant's statement, however, in the absence of other credible and relevant evidence establishing that he resided in the United States throughout the requisite period, will not sustain his claim. As previously noted, in order to meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously 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 applicant's reliance upon documents with minimal probative value, it is concluded that the evidence submitted fails to establish continuous residence in an unlawful status in the United States during the requisite period.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he 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.