



U.S. Citizenship
and Immigration
Services

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MSC 05 214 10605

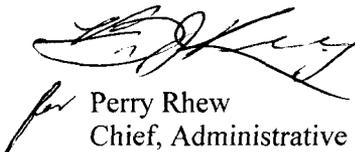
IN RE: Applicant: [Redacted]

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. 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 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, Los Angeles, California, and 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 reiterates his claim to have arrived in the United States in 1981. The applicant asserts that at the time of his interview he was very nervous and confused regarding the dates. The applicant apologizes for any misunderstanding this information may have caused and requests that his application be reconsidered. The applicant asserts that he does not have any receipts as he received his wages in cash and paid all his bills in cash. The applicant submits copies of documents that were previously provided in support of his appeal.

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).

For purposes of establishing residence and presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the alien attempted to file a completed Form I-687 application and fee or was caused not to timely file, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. Paragraph 11, page 6 of the CSS Settlement Agreement and paragraph 11, page 10 of the Newman Settlement Agreement.

An alien applying for adjustment of status 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. *See* 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 including affidavits 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.

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.

In an attempt to establish continuous unlawful residence in the United States since prior to January 1, 1982, the applicant submitted:

- A letter dated March 25, 2003, from ██████████ in Simi Valley, California, who indicated that he has personally known the applicant since 1981 and assisted the applicant with his income tax preparation and other personal matters. The affiant attested to the applicant’s moral character.
- A statement dated March 5, 2003, from ██████████ who indicated that she has known the applicant since August 1982 and attested to the applicant’s moral character.
- A statement dated March 26, 2003, from ██████████, who indicated that she has personally known the applicant since 1983 and attested to his moral character.
- A statement dated March 14, 2003, from ██████████ who indicated that he met the applicant through a business associate in July 1984. The affiant attested to the applicant’s moral character.
- A statement dated March 25, 2003, from ██████████ who indicated that he has been acquainted with the applicant since 1987. The affiant attested to the applicant’s moral character.

- A letter dated September 8, 2000, from the vice president of administration of Du-par's Restaurants, who indicated that the applicant was employed from January 5, 1988 through June 1990.

The applicant provided an unsigned statement indicating that he came to the United States in 1981, a friend named [REDACTED] helped him move to this country, he resided with [REDACTED] at [REDACTED] [REDACTED] he did not attend school because he had to work to support his family, and he worked "doing yards and to clean houses."

The director determined that the applicant had failed to submit sufficient credible evidence establishing his continuous residence in the United States since prior to January 1, 1982, and, therefore, denied the application on April 30, 2007.

The statements issued by the applicant have been considered. However, the documents discussed above do not support a finding that the applicant entered the United States prior to January 1, 1982, and resided since that date through the date he attempted to file his application, as he has presented contradictory and inconsistent documents, which undermines his credibility.

The applicant claims on his Form I-687 applications to have resided at [REDACTED] from February 1981 to August 1985. The applicant, however, has not provided any evidence from affiants, specifically his friend [REDACTED] who could attest to this claim.

The applicant also claims on his Form I-687 applications to have been employed at "Nesssn Motors" from April 1981 to November 1983; Du-par's Restaurant from January 1984 to August 1987; and at Denny's Restaurant from August 1987 to April 1992. However, the representative from Du-par's Restaurant only attested to the applicant's employment since January 1988, and the applicant has not provided any evidence to support the remaining employment claims. Further, the employment letter from Du-par's Restaurant raises questions to its authenticity as the applicant did not claim to have been employed at the restaurant in 1988.

On September 6, 1998, the applicant was detained at the San Ysidro Port of Entry as he presented a counterfeit Form I-551, Resident Alien Card. The Form I-867A, Record of Sworn Statement in Proceedings, reflects that the applicant was asked, "Have you ever lived in the United States?" The applicant replied, "Yes, 11 years." As such, the applicant would have been residing in the United States since 1987 not 1981.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I. & N. Dec. 582 (BIA 1988).

The remaining affiants failed to state the applicant's place of residence during the requisite period, and did not provide 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. To be considered probative, an affiant's affidavit 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 affidavit 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 from the affiants do not provide sufficient detail to establish that they had an ongoing relationship with the applicant that would permit them to know of the applicant's whereabouts and activities throughout the requisite period.

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. The evidence of record submitted does not establish with reasonable probability that the applicant was already in the United States before January 1, 1982, and that he resided in a continuous unlawful status 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.