



U.S. Citizenship
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Services

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Office: NEW YORK

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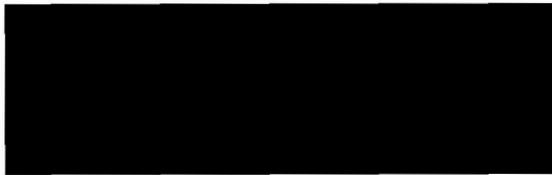
Applicant:



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:



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.

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, New York, 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 asserts that he has been residing in the United States since before January 1, 1982. The applicant states he does not have evidence of a legal entry in 1981 because he entered the United States without inspection. The applicant states that he has submitted sufficient evidence to establish his continuous residence in the United States during the requisite period.

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:

- An affidavit notarized May 19, 2005, and a letter dated March 20, 2006, from [REDACTED], who attested to the applicant’s residence in the United States since 1981. The affiant indicated that the applicant resided with her from 1981 to 1994 at [REDACTED]
- A statement from [REDACTED] who indicated that the applicant cleaned her house from 1981 to 1994.
- A statement from [REDACTED] who indicated that the applicant was “doing housekeeping for me started in 1981 till 1994.”

The applicant also submitted a Notice of Claim against the City of New York regarding the building where he resided in 1997 that had collapsed. The applicant at the time of his interview indicated that he lost all of his personal property in the collapse.

On March 22, 2006, the director issued a Notice of Intent to Deny, which advised the applicant that the affidavits and statements submitted appeared to be neither credible nor amenable to verification and that no evidence was submitted demonstrating that the affiants had direct personal knowledge of the events testified to in their respective affidavits. The applicant was also advised that the Notice of Claim offered no evidence of the applicant residing in the United States prior to 1981.

The applicant, in response, submitted:

- A photocopied letter dated December 10, 1987, from [REDACTED] for The Star-Ledger in Somerville, New Jersey regarding a job delivering newspapers. The affiant indicated, "in view of the past your good and efficient performance, where there has been no complaint [sic] of misdelivery, [sic] these routes are being offered to you."
- A photocopied letter dated October 25, 1981, from [REDACTED] in Belle Mead, New Jersey, regarding a job position as an assistant manager.
- A photocopied letter dated December 15, 1981, from [REDACTED] of Easter Seal Society in Somerville, New Jersey, who indicated that the applicant has worked as a volunteer for a few weeks.
- An affidavit from [REDACTED], who indicated that he personally knows that the applicant has been residing in the United States since 1981. The affiant indicated from 1982 to 1988, the applicant "used to come from New Jersey once in 4 or 5 weeks and stay with me as a paying guest." The affiant also indicated that the applicant was in his employ during these visits.
- Photocopies of receipts for room and board and bills paid from 1983 to 1987 signed by [REDACTED].
- An additional affidavit from [REDACTED] reasserting the veracity of her previous statements. The affiant indicated that the applicant was also in her employ from 1981 to 1988 and "whatever work [the applicant] did for me was paid regularly signed"
- Photocopies of rent receipts for the applicant's room and board dated December 1, 1981 through August 1, 1988 from [REDACTED]
- Photocopies of receipts from several affiants dated throughout the requisite period.
- Photographs the applicant claimed were taken during the requisite period.

The director determined that the receipts lacked probative value as the originals were not presented and the Service was unable to verify the authenticity of the receipts; the affiants had no direct personal knowledge of the events and circumstances of the applicant's residency; and the letter from Easter Seal Society was deceitfully created or obtained as the Service was unable to verify the information or to corroborate the letter as authentic. The director concluded 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 June 4, 2007.

The statements issued by the applicant have been considered. 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. Specifically:

indicates that the applicant resided with her throughout the requisite period at . As evidence to establish her residence at this address, the affiant provided a one-year lease agreement entered into on February 7, 1979. The lease agreement, however, raises questions as to its authenticity as the agreement contains revision dates of November 1, 2005 and March 31, 2006.

The photographs have no identifying evidence that could be extracted which would serve to either prove or imply that the photographs were taken in the United States and during the requisite period.

The letters from The Star Ledger and Easter Seal Society are questionable as the applicant did not claim employment at these entities on his Form I-687 application or at the time of his interview.

Further, the letters from The Star Ledger and A&K Textiles dated in 1981 raise questions as to their authenticity as they each list a telephone and/or facsimile number with the area code of "908." The "908" area code did not come into existence until June 8, 1991.¹

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).

Under these circumstances, it cannot be concluded that the applicant has established that the claim of continuous residence from before January 1, 1982, through the date of filing is credible and probably true. Therefore, the applicant has not established eligibility by a preponderance of the evidence as required by 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.

¹ <http://areacode.org/908> and <http://www.nytimes.com/1996/10/24/nyregion/more-area-codes-planned.html>