

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

L2

FILE: [REDACTED]
MSC-05-045-11389

Office: NEW YORK

Date: JUL 17 2007

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. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case 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.

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, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that he attempted to file a Form I-687, Application for Status as a Temporary Resident, with the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS) in the original legalization application period of May 5, 1987 to May 4, 1988. The director issued a notice of intent to deny the application, allowing the applicant thirty (30) days to submit additional evidence. The director's notice of decision provides that the applicant failed to submit additional evidence within the allotted time. Therefore, the director determined that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and denied the application.

On appeal, the applicant asserts that he has provided proof of his presence in the United States during the period from 1981 until May 4, 1988. The applicant maintains that he provided an affidavit as evidence in response to the notice of intent to deny. The applicant submitted this document as additional evidence on 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 Immigration and Nationality Act (Act), 8 U.S.C. § 1255a(a)(2).

An applicant for temporary resident status must 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).

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, during the original legalization application period of May 5, 1987 to May 4, 1988, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

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. 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.* 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 (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 has furnished sufficient credible evidence to demonstrate that he resided in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application with the Service in the original legalization application period of May 5, 1987 to May 4, 1988. Here, the submitted evidence is not relevant, probative, and credible.

The record shows that the applicant filed a Form I-687, Application for Status as a Temporary Resident, and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, with CIS on November 14, 2004. The applicant's Form I-687 indicates that he has resided in the United States since July 1981. Part 30 of the application form requests the applicant to list all of his residences in the United States since his first entry. The applicant responded, in part, that he resided at [REDACTED] New York, NY from July 1981 until October 1986 and [REDACTED] New York, NY from October 1986 until June 1995. Part 33 of the application form requests the applicant to list his employment history since his entry into the United States. The applicant responded, in part, that he worked as a street vendor at an unknown location from July 1981 until October 1989. Although the applicant's Form I-687 indicates that

he has continuously resided in the United States during the requisite period, he has failed to provide credible evidence to corroborate this claim.

The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of evidence to establish proof of residence in the United States during the requisite period. Examples of documentation that can be submitted include: past employment records; utility bills; hospital or medical records; attestations by churches, unions or other organizations; deeds, mortgages, contracts to which the applicant has been a party; and letters or correspondence between the applicant and another person or organization. The applicant has failed to provide such corroborating evidence. An applicant may also provide "any other relevant document" as proof of his residence. 8 C.F.R. § 245a.2(d)(3)(vi)(L). The applicant has submitted two documents entitled "Affidavit of Witness" to corroborate his residence in the United States during the requisite period.

The applicant submitted a notarized statement from [REDACTED] which provides that he has known the applicant since 1981. This statement provides, "I first met [REDACTED] at the Masjid when he was 13 years old. My relationship with [REDACTED] has been based on our religious beliefs. He is a good boy with good morals." This statement is deficient because it fails to provide detailed information on the extent of [REDACTED] contact with the applicant during the requisite period.

The applicant submitted a notarized statement from [REDACTED], which provides that he has known the applicant since December 1981. This statement provides that Mr. [REDACTED] has personal knowledge of the applicant's residence in the United States since December 1981 until present. This statement is also deficient because it fails to provide detailed information on the extent of [REDACTED]'s contact with the applicant during the requisite period.

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). Due to the above noted deficiencies, the documentation submitted by the applicant can at best be given minimal weight as corroborating evidence. Therefore, the applicant has not met his burden of proving by a preponderance of the evidence that he has resided in the United States during the requisite period, pursuant to 8 C.F.R. § 245a.2(d)(5).

Even if the applicant had established that he continuously resided in the United States during the requisite period, he could be ineligible and inadmissible to adjust status to temporary resident based on information in his record, which indicates that he has multiple criminal convictions. An applicant for temporary resident status must establish that he has not been convicted of any felony or of three or more misdemeanors committed in the United States. Section 245A(a)(4) of the Act, 8 U.S.C. § 1255a(a)(4). "Felony" means a crime committed in the United States punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except when the offense is defined by the state as a misdemeanor, and the sentence actually imposed is one year or less, regardless of the term such alien actually served. Under this exception, for purposes of 8 C.F.R. Part 245a, the crime shall be treated as a misdemeanor.

8 C.F.R. § 245a.1(p). "Misdemeanor" means a crime committed in the United States, either (1) punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or (2) a crime treated as a misdemeanor under 8 C.F.R. § 245a.1(p). For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor. 8 C.F.R. § 245a.1(o).

An FBI report based upon the applicant's fingerprints reveals that on January 16, 1996, the applicant was arrested and charged with *trademark counterfeiting in the third degree* in violation of section 165.71 of the New York Penal Law. The FBI report does not contain information on the final disposition related to this charge. Section 165.71 of the New York Penal Law provides that *trademark counterfeiting in the third degree* is a class A misdemeanor, which carries a sentence of imprisonment not exceeding one year. On June 26, 2000, the applicant was again arrested and charged with *trademark counterfeiting in the third degree* under the alias, [REDACTED]. The FBI report shows that the applicant was convicted upon a plea of guilty for this offense.

On October 1, 2003, the applicant was arrested and charged with *failure to disclose the origin of a recording in the first degree* in violation of section 275.40 of the New York Penal Law and *disorderly conduct* in violation of section 240.20 of the New York Penal Law. The applicant was arrested and charged for these offenses under the alias, [REDACTED]. Section 275.40 of the New York Penal Law indicates that *failure to disclose the origin of a recording in the first degree* is a class E felony, which carries a maximum sentence of imprisonment of four years. The FBI report does not contain information on the final disposition related to this charge. Section 240.20 of the New York Penal Law indicates that *disorderly conduct* is a violation, which carries a sentence of imprisonment that shall not exceed fifteen days. The FBI report indicates that the applicant was convicted of *disorderly conduct* upon a plea of guilty. The applicant has not provided certified court dispositions regarding these charges, therefore, the final conviction information is unknown. If the applicant was convicted of these offenses, he could be ineligible for temporary resident status under Section 245A(a)(4) of the Act, 8 U.S.C. § 1255a(a)(4).

It should be noted that the applicant has failed to disclose this alleged arrest and conviction on his I-687 application. Part 37 of this application requests the applicant to answer "Yes" or "No" to the question of "[h]ave you ever been arrested, cited, charged, indicted, fined or imprisoned for breaking or violating any law or ordinance, excluding traffic violations." The applicant answered "No" to this question. The applicant signed this application by certifying under penalty of perjury that the information he provided is true and correct. If the applicant was arrested, charged or convicted of these offenses, he could also be inadmissible for willfully misrepresenting a material fact. Section 212(a)(6)(C) of the Act, 8 U.S.C. § 1182(a)(6)(C) provides, "[a]ny alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible."

In conclusion, the absence of sufficiently detailed supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts 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 applicant's reliance upon documents with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application with the Service, 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.