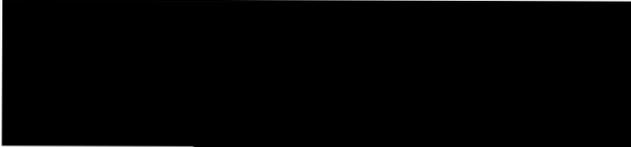




U.S. Citizenship
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FILE: [Redacted]
MSC-05-097-10023

Office: Los Angeles

Date: DEC 21 2006

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. 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, Los Angeles, 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. 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 he has lived in the United States since prior to January 1, 1982. He attempts to account for the contradictions in his previously furnished evidence.

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).

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. See 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 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 submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on January 5, 2005. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant showed his first address in the United States to be in Mendota, California, from May 1985 to May 1986. Similarly, at part #33, he showed his first employment in the United States to be for Iresa Bros Inc., in Mendota, from May 1985 to May 1986.

At his interview with a CIS officer on March 27, 2006, the applicant stated that he actually came to the United States on July 15, 1981. The officer's notes from the interview indicate the applicant said another individual completed his application. However, at part #44 of the application, no one's name and signature appear as the preparer of the application.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided voluminous documentation, mostly in the form of copies of tax returns. However, none of the returns relate to the required period of 1981-1988. Only two documents, a Form I-705 affidavit and a corresponding letter, both from _____ relate to this period in question. _____ of Iresa Bros. Inc., stated the applicant worked 105 days there from May 1, 1985 to May 1, 1986.

Thus, on the application, which the applicant signed under penalty of perjury, he showed that he resided and worked in the United States since May 1985. The only evidence submitted with the application that is relevant to the 1981-88 period in question showed the applicant worked from May 1985 to May 1986.

In denying the application the director noted the above, and the fact that the applicant's claim at the interview to have commenced residing in the United States in 1981 was unsupported, and contradicted what the applicant himself had put forth on the application. The director also noted that on the applicant's

Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents that he completed prior to filing this application for temporary residence, he stated that he commenced residing in the United States in 1990. Further, on the Form G-325A Biographic Data that the applicant submitted with the cancellation of removal application, the applicant indicated that he resided in Guatemala until 1990.

On appeal the applicant attempts to explain these contradictions. He furnishes a new letter and affidavit from [REDACTED] attesting to the applicant's employment from 1981 through April 1985. Mr. [REDACTED] does not explain why he attested to only one year of employment, May 1985 to May 1986, in the initial letter and affidavit. The applicant states that he submitted the first letter and affidavit from [REDACTED] attesting to the one year of employment because that is all of the employment he needed to qualify for special agricultural worker status under section 210 of the Act. It is noted that the filing period for that status ended in 1988. The applicant filed this application for temporary residence under section 245A of the Act in 2005. His explanation regarding special agricultural worker status makes no sense.

The applicant also tries to explain why his cancellation of removal application shows that he arrived in the United States in 1990. He states that the entry in 1990 was his last entry, and that he was victimized by inadequate representation in the completion of his application. He fails to provide any specifics, such as the name of the individual who purportedly represented or assisted him. He also fails to address the fact that on his own application for temporary residence, he indicated that his residence in the United States began in 1985.

On appeal the applicant furnishes a letter from his employer, PCA Industries, stating he has worked there since 1997. He also submits a letter from his pastor referring to the applicant's membership in his church, the Primera Iglesia Bautista Principe de Paz, since around 1996. The applicant provides an affidavit from [REDACTED] stating she met him at an unnamed church and has knowledge that he has resided in the United States since February 1993. In another affidavit [REDACTED] attests to the applicant's residence in the United States since March 1994; she also states she met him at the unnamed church then. None of these individuals attest to the applicant's residence in the United States prior to 1993.

The applicant also submits an affidavit from [REDACTED] who states she met the applicant at an unnamed church in 1981, and knows he has resided in the United States since July 1981. This affidavit is in the same format as those submitted by [REDACTED] and [REDACTED]. None of the affiants identify the church. These affidavits are bereft of sufficient detail to support the applicant's claim of residence since 1981. It is reiterated that the pastor stated, in 2006, that the applicant had been a member of Primera Iglesia Bautista Principe de Paz for about 10 years. If the other affiants are referring to the same church, then they are stating that the applicant attended there for years before, according to the pastor, he became a member.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period, and has submitted attestations from only two people concerning that period. The new affidavit from [REDACTED] is unaccompanied by any cogent explanation from him

or the applicant as to why [REDACTED] only referred to the applicant's residence in 1985-86 in the initial affidavit. Also, the affidavit from [REDACTED] referred to above lacks sufficient detail.

The absence of sufficiently detailed supporting documentation that provides testimony 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 contradictory statements on his applications and his 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 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.