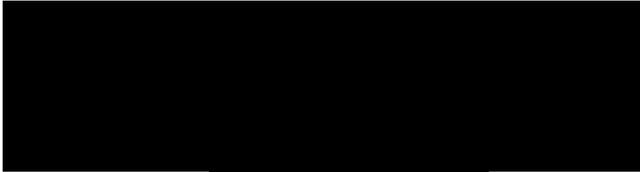




U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



LI

FILE: [Redacted]  
MSC 05 224 10463

Office: LOS ANGELES

Date: AUG 03 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:



**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, counsel, on behalf of the applicant, asserts that the applicant has provided sufficient evidence to establish that he has lived in the United States since prior to January 1, 1982 and challenges the propriety of the director's findings.

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 applying for adjustment to 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, 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. 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 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.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided the following documentation in support of his Form I-687, which was filed on May 12, 2005:

- Affidavits notarized on December 17, 2001 from [REDACTED] and [REDACTED]. Both affiants provide the applicant's current residential address and attest to their respective knowledge of the applicant since 1981.
- An affidavit from [REDACTED] executed on October 9, 2002 attesting to the applicant's employment at JJ&T Limousine from July 1981 to August 1986. [REDACTED] stated that he commenced his employment with JJ&T Limousine in August 1981 and continued such employment until August 1988.
- Foreign affidavits executed on March 3 and March 16, 2005 from [REDACTED] the applicant's brother, and [REDACTED] the applicant's friend, respectively. Each affiant claimed to have known of the applicant's departure for the United States in June 1981.

- An affidavit dated March 6, 2005 from [REDACTED] in which the affiant claims to have known the applicant since 1981.
- An affidavit from [REDACTED] dated October 11, 2002 in which the affiant claims to have known the applicant since 1984.
- An affidavit from [REDACTED] dated January 12, 2002. The affiant stated that he resided with the applicant at [REDACTED] Los Angeles, CA 90020 from July 1985 until August 1987 and at [REDACTED] from August 1987 through March 1990. The affiant also provided the applicant's most recent address as well as the affiant's own phone number for further verification.
- An affidavit from [REDACTED] dated January 10, 2002 in which the affiant stated that he has known the applicant since 1985 at which time the applicant resided at [REDACTED] Los Angeles, CA 90020.
- An affidavit from [REDACTED] dated October 22, 2002 in which the affiant attested to the applicant's employment at Southland Corp., from August 1986 to March 1990. The affiant stated that was the applicant's co-worker and that she worked at Southland Corp. from June 1985 to February 1991.
- A letter dated January 10, 2002 from [REDACTED] a doctor of internal and family medicine in Montebello, California, who indicated that the applicant has been his patient since 1985.
- A photocopy of an envelope whose return address indicates that it originated from Bangladesh and was sent to the applicant in October 1981 at [REDACTED] Los Angeles, CA 90020.
- The applicant's social security statement indicating that the applicant has reported his earnings since 1990.

On September 6, 2005, Citizenship and Immigration Services (CIS) issued a notice of intent to deny (NOID) notifying the applicant that he failed to establish his continued residence since prior to January 1, 1982 by a preponderance of the evidence.

In response, counsel submitted a statement dated October 1, 2005 in which he contested the director's intent to deny the application. Counsel discussed a Service memorandum, which addressed the burden of proof of applicants seeking to adjust their status to that of temporary resident. Counsel asserted that affidavits must be weighed in light of their credibility and verifiability in establishing the relevant facts at issue. Counsel warned that the NOID does not suggest that the proper factors have been considered.

Nevertheless, the director issued a decision dated July 29, 2006 denying the applicant's Form I-687. The director specifically noted that the letter from the applicant's physician was not supported by medical records and further stated that the affidavits submitted have no probative value and, therefore, do not establish continuous residence during the relevant time period.

On appeal, counsel resubmits several of the documents submitted initially in support of the Form I-687 filed in May 2005. Counsel also asserts that the director's denial is contrary to congressional intent, Service policy, precedent case law, and the Act. While the director did not address all of the evidence submitted by the applicant in support of his claimed continuous residence, a review of such evidence suggests that the director's decision was warranted. Specifically, while the applicant submitted the affidavits of [REDACTED] and [REDACTED] each of whom claimed to be a co-worker of the applicant at two different establishments, the applicant did not submit any evidence from the respective employers authenticating the applicant's employment claim. As such, CIS is unable to verify the applicant's employment claim and the respective claims made in [REDACTED] and [REDACTED] affidavits.

With regard to residence affidavits submitted by [REDACTED] and [REDACTED] all three affiants claimed to have known the applicant as of 1981, but provided no verifiable information, including details as to how and where they met the applicant, the nature and frequency of their respective interactions with the applicant, or any of the applicant's addresses during the time they knew him. Similarly, the affidavit of [REDACTED] merely discloses the year when his purported acquaintance with the applicant commenced. No verifiable information, such as the applicant's residential addresses or the nature of his relationship with the applicant, was provided. Additionally, with regard to [REDACTED] claim of having been the applicant's treating physician since 1985, no corroborating documentation was provided.

While [REDACTED] and [REDACTED] both provided verifiable information regarding the applicant's places of residence during certain years within the relevant time period, neither could attest to the time period since prior to January 1, 1982 through June 1985. The AAO acknowledges the applicant's submission of an envelope addressed to his claimed U.S. address in 1981. However, this single document from October 1981 does not lead to the conclusion that the applicant remained at the address and was still residing there as of January 1, 1982, as claimed in No. 30 of his Form I-687 application.

In summary, the applicant has provided deficient affidavits lacking in verifiable information to account for his residence in the United States from January 1, 1982 through June 1985. As previously stated, a single envelope, which was sent to the applicant in October 1981 is not sufficient to cover the span of a time period of over three years. 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 as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M-*, 20 I&N Dec. 77. 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.