

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

L1



FILE: [REDACTED]
MSC 06 055 12362

Office: San Diego

Date: DEC 06 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:

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.

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, San Diego, California. The decision 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, on November 24, 2005. The district 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 as 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 of residence in this country for the requisite period and submits new affidavits in support of this claim.

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).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "until the date of filing" shall mean until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

The applicant 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 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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to establish continuous residence 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 from May 5, 1987 to May 4, 1988. Here, the submitted evidence is not relevant, probative, and credible.

As noted above, the applicant submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on November 24, 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 listed his most current address of record without indicating the date he began residing at this address. The applicant failed to list any other addresses of residence in the United States. Furthermore, at part #31 of the Form I-687 application where applicants were asked to list all affiliations or associations with clubs, organizations, churches, unions, businesses, etc., the applicant listed “N/A.”

The fact that the applicant failed to list any residence in this country during the requisite period at part #30 of the Form I-687 application seriously diminished his claim of continuous residence in the United States since prior to January 1, 1982. In addition, the applicant failed to include any documentation to demonstrate that he resided in this country for the period in question.

On January 11, 2006, the district director issued a notice of intent to deny to the applicant informing him of CIS's intent to deny his application. Specifically, the district director noted that this was based upon the applicant's failure to submit any evidence of continuous unlawful

residence in the United States from prior to January 1, 1982. The applicant was granted thirty days to respond to the notice.

In response, the applicant submitted an unsigned declaration that is attributed to [REDACTED] Flores, as well as two of Ms. [REDACTED] photocopied identification documents. Ms. [REDACTED] indicated that she first met the applicant on an unspecified date in 1981 at her aunt's house in San Diego, California. Ms. [REDACTED] noted that she subsequently met the applicant many times at her aunt's house when he visited to attend family reunions and birthdays, make repairs on the house, buy groceries, and attend church. However, Ms. [REDACTED] failed to provide any specific and verifiable testimony relating to applicant's residence in this country prior to January 1, 1982. Further, Ms. [REDACTED] testimony that the applicant attended church with her aunt conflicted with the applicant's own testimony at part #31 of the Form I-687 application as the applicant failed to list any affiliation with a church.

The applicant provided an unsigned declaration that is attributed to [REDACTED] as well as a photocopied page from Mr. [REDACTED] United States passport. Mr. [REDACTED] declared that the applicant was a part of his family whom he first met in San Diego, California on an unspecified date in 1981. Mr. [REDACTED] stated that he subsequently saw the applicant on occasion in San Diego at family reunions. While Mr. [REDACTED] attested to the applicant's residence in this country since 1981, he failed to provide any detailed and relevant information that would tend to corroborate the applicant's claim of residence in the United States for the requisite period. In addition, the probative value of the Mr. [REDACTED] testimony is further limited as he has acknowledged that he is a member of the applicant's family who must be viewed as having an interest in the outcome of proceedings rather than an independent and disinterested third party.

The applicant included an unsigned declaration that is attributed to [REDACTED] as well as two of Mr. [REDACTED] photocopied identification documents. Mr. [REDACTED] noted that he first met the applicant on an unspecified date in 1981 when the applicant visited his parent's home in San Diego, California. Mr. [REDACTED] stated that he and the applicant subsequently became good friends and that the applicant continued to visit his parent's home to attend family reunions and watch football games. Nevertheless, Mr. [REDACTED] declaration failed to include any specific and verifiable testimony to substantiate the applicant's claim of residence in this country since prior to January 1, 1982.

The applicant submitted an unsigned declaration that is attributed to Roberto Gabriel, as well as two of Mr. [REDACTED] photocopied identification documents. Mr. [REDACTED] indicated that he first met the applicant in San Diego, California while celebrating the New Year in 1987 and that he subsequently encountered the applicant at family reunions. Mr. [REDACTED] stated that he had knowledge the applicant came to the United States prior to 1982 because the applicant had told him so. However, Mr. [REDACTED] admitted that he had no knowledge that the applicant resided in this country from prior to January 1, 1982 until they first met in 1987 other than what the applicant had told him. Further, Mr. [REDACTED] failed to attest to any pertinent information relating to the applicant's residence in the United States from New Year of 1987 through the date he attempted

to file a Form I-687 application with the Service in the original legalization application period from May 5, 1987 to May 4, 1988.

The district director determined that the applicant failed to establish his residence in the United States in an unlawful status from prior to January 1, 1982 and, therefore, denied the Form I-687 application on October 25, 2006.

On appeal, the applicant reaffirms his claim of residence in this country since prior to January 1, 1982. However, the applicant fails to provide any explanation as to why he listed only his current address of record at part #30 of the Form I-687 application without either listing the date he began residing at this address or listing other previous addresses where he may have resided during the requisite period. Additionally, the applicant fails to provide any explanation as to why he failed to include any evidence of his residence in the United States for the period in question with his Form I-687 application and only just submitted such evidence after having been informed of CIS's intent to deny his application.

The applicant includes a new affidavit signed by [REDACTED], the same individual who previously provided a declaration with the applicant's response to the notice of intent to deny. Mr. [REDACTED] reiterates his assertion that he has been a good friend of the applicant since 1981 through to the present. Mr. [REDACTED] notes that the applicant visited him at his parent's home to watch football games and attend family reunions. However, Mr. [REDACTED] fails to provide any specific and verifiable testimony to corroborate the applicant's residence in the United States after he and the applicant first met in 1981. Further, Mr. [REDACTED] fails to state how he dated his and the applicant's initial acquaintance and how frequently he saw the applicant.

The applicant provides a new affidavit signed by [REDACTED], the same individual who previously provided a declaration with the applicant's response to the notice of intent to deny. Ms. [REDACTED] states that she has known the applicant since 1981 up through the present. Ms. [REDACTED] notes that she and the applicant used to attend church every Sunday and that she continued to see the applicant and his family often at church through the present. Ms. [REDACTED] indicated that she and the applicant would either go to the park or visit each other in their respective homes after attending church. As noted previously, Ms. [REDACTED]'s testimony that she and the applicant attended the same church conflicts with the applicant's own testimony at part #31 of the Form I-687 application as the applicant failed to list any affiliation with a church. In addition, Ms. [REDACTED] fails to specify the name and the location of the church she and the applicant purportedly attended on a regular basis. Finally, Ms. [REDACTED] affidavit does not include any pertinent, verifiable testimony to substantiate the applicant's claim of residence in this country since prior to January 1, 1982.

The applicant submits a new affidavit signed by [REDACTED] the same individual who previously provided a declaration with the applicant's response to the notice of intent to deny. Mr. [REDACTED] contends that the applicant is his nephew who came to live with him in the United States in 1981 and the applicant continued to live with him for approximately the next nine years.

Although Mr. [REDACTED] provides his most current address of residence, he fails to clarify whether this is the same address where the applicant had resided with him during the requisite period. Without such detailed testimony, Mr. [REDACTED] affidavit must be considered to be of limited probative value.

The existence of conflicting testimony relating to critical elements of the applicant's residence and the lack of sufficiently detailed evidence that provides relevant and material testimony to corroborate his claim of continuous residence for the period in question 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. The applicant has failed to submit sufficient probative documentation to meet his burden of proof in establishing that he has resided in the United States since prior to January 1, 1982 by a preponderance of the evidence as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M-*, 20 I&N Dec. at 77.

Given the applicant's failure to provide sufficient credible evidence to corroborate his claim of residence, 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 section 245A(a)(2) of the Act. 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.