

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

L

[Redacted]

FILE:

[Redacted]

Office: LOS ANGELES

Date:

DEC 07 2007

MSC-06-025-14035

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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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. 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 October 25, 2005. 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. Specifically, the director considered the applicant's I-687 application and documents submitted in support of his claim and his testimony and prior applications for asylum and cancellation of removal in the record. The director noted that during his interview on May 2, 2006, the applicant provided information consistent with the information on his Form I-687, indicating that he first entered the United States in 1981; resided at various addresses in Gardena and Torrance, California; was employed since 1981 by MatchMaster, Inc. in Los Angeles; and made several short family visits to Mexico between 1984 and 1994. The director concluded, however, that the applicant had provided contradictory information in his prior applications for asylum and cancellation of removal, in which he claimed to have entered the United States in 1987. 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, through counsel, admits that in connection with prior applications he had stated to the Immigration and Naturalization Service (now Citizenship and Immigration Services or CIS) and to an Immigration Judge that he first entered the United States in 1987. He explains that he provided that incorrect date of entry because he was "victimized by a notary public" whose goal was to have the applicant placed in removal proceedings so that he could apply for cancellation of removal; as the applicant would need to show only that he had ten years of continuous presence, the notary advised him to submit an asylum claim in 1997, claiming entry in 1987, and then document his presence as of 1987 for purposes of cancellation of removal. The applicant asserts that the information he has provided in support of his I-687 application, however, including documentary proof that he entered the United States before 1987, is sufficient to overcome his prior statements and to establish that he first entered the United States in 1981.

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 physical presence under the CSS/Newman Settlement Agreements, the term “until the date of filing” in 8 C.F.R. § 245a.2(b)(1) means until the date the applicant 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. 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 period, 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 for the duration of the requisite period. In this case, the applicant has provided false information under oath, including inconsistent information regarding his date of entry and dates of residence and employment in the United States. He has also provided a plausible explanation for having provided this false information in support of his prior claims for asylum and

cancellation of removal and has provided credible and probative evidence to show that he did in fact enter the United States prior to 1987, the false date of entry he had previously given. However, the evidence he has submitted to demonstrate that he resided in the United States for the requisite period is not relevant, probative, and credible. Moreover, his prior statements under oath to an asylum officer and an immigration judge that he first entered and began working in the United States in 1987, regardless of the reason he now gives for making those false statements, undermines his credibility.

The record shows that, although the applicant submitted voluminous documentation (approximately 244 pages) to establish residence in the United States from 1981 through 2005, including copies of photographs, receipts, affidavits and tax returns, only very few documents in the record allegedly pertain to the requisite period. The AAO finds that the documents submitted are credible evidence of the applicant's residence in the United States beginning in 1984, but do not establish that the applicant entered the United States prior to January 1, 1982 and resided in the United States thereafter as required.

The following documents were submitted in support of the applicant's I-687 application:

1. Photographs of the applicant and others that the applicant claims were taken in the United States in 1981, 1982, 1983, 1984, 1985 and 1987. There is no way to determine from the photographs, however, the date or place they were taken. They cannot therefore be accorded any weight as evidence in support of the applicant's past residence in the United States during the requisite period.
2. Various identification cards and other evidence of residence or presence in the United States in 1984, 1985, 1986, 1987 and 1988. These documents include copies of (a) a page from a passport indicating issuance of a visa (border crossing card and B-1/B-2 visa) in August 1984 and U.S. entry stamps in 1984 and 1993, indicating that the bearer of the passport entered the United States, as a resident of Mexico, on those dates (there is no indication that the passport is the applicant's); (b) the applicant's California Identification Card issued on November 9, 1984; (c) a traffic ticket dated February 6, 1985 and court receipts from the Los Angeles Municipal Court dated April 4, 1985 (there is no indication that the applicant was issued the ticket or paid the fine); (d) the applicant's California Driver License issued on February 1, 1985; (e) the applicant's California State Farm Insurance card issued on November 23, 1987 and another California Car Insurance Card effective November 23, 1988; (f) a U.S. Postal Service Inquiry form regarding a request for information about a mailing by the applicant from Gardena, California on March 13, 1986; and (g) the applicant's California Driver License issued on April 18, 1988. Not all of these documents can be linked to the applicant (see (a) and (c) above) and can therefore be afforded no evidentiary weight; the others, however, serve as credible contemporary evidence of residence in the United States from 1984 through 1988.
3. A statement by [REDACTED] dated August 31, 2005 that she and the applicant were co-workers at Matchmaster Dyeing & Finishing since 1981, that the applicant is a respectable member of the community and that she has attended several functions given by the applicant's family. The statement is not notarized and is not accompanied by identification; it lacks any details that would lend credibility to an alleged 24-year relationship with the applicant; it does not include [REDACTED]'s address or

telephone number, and thus cannot be verified; it is not accompanied by any evidence that [REDACTED] resided in California for the relevant period or any evidence that she worked for Matchmaster for the relevant period. As such, the statement can be afforded minimal weight as evidence of the applicant's residence and presence in the United States for the requisite period.

4. A statement by [REDACTED], dated August 31, 2005, that he has known the applicant since the 1980's and has done business with him on several occasions since then. He identifies himself as the owner of [REDACTED] and the statement is on letterhead showing a Gardena, California, address and telephone number. Mr. [REDACTED] does not specify the exact years he claims to have known the applicant, as "since the 1980's" could refer to 1989 and afterwards; the statement is not notarized and also suffers from many of the same deficiencies noted above. It lacks any details that would lend credibility to an alleged 15 to 25-year relationship with the applicant; it is not accompanied by any evidence that Mr. [REDACTED] resided in California for the relevant period. As such, the statement can be afforded minimal weight as evidence of the applicant's residence in the United States for the requisite period.

5. A statement by [REDACTED] who identifies himself as Personnel Manager of MatchMaster Dyeing & Finishing, Inc, dated August 30, 2005, certifying that the applicant was currently employed and had been employed by MatchMaster since October 4, 1981. Although the statement is on company letterhead, it is not notarized. It also fails to meet certain regulatory standards set forth at 8 C.F.R. § 245a.2(d)(3)(i), which provides that letters from employers must include the applicant's address at the time of employment; exact period of employment; whether the information was taken from official company records and where records are located and whether CIS may have access to the records; if records are unavailable, an affidavit form-letter stating that the employment records are unavailable may be accepted which shall be signed, attested to by the employer under penalty of perjury and shall state the employer's willingness to come forward and give testimony if requested. The statement by [REDACTED] does not include the required information and cannot be verified. It can be afforded minimal weight as evidence of the applicant's residence in the United States for the duration of the requisite period. The AAO notes that the applicant has submitted evidence that he has been employed for many years at MatchMaster, beginning at least in 1988 as shown on his pay statements, but he has failed to provide credible evidence that he worked there for the duration of the requisite period.

6. Affidavits from [REDACTED] and [REDACTED] These four affidavits were notarized and dated April 28, 2006. The affiants make duplicate statements that they have been working at Matchmaster since 1978, 1974, 1977 and 1973 respectively, and that they met the applicant when he started working there in the month of October, 1981; they provide the same telephone number where they can be contacted. The affiants fail to provide any evidence that they have worked for Matchmaster as claimed or that they have resided in the United States for the requisite period; their statements uniformly lack any details that would lend credibility to their claimed relationship with the applicant that began in October 1981. Thus, these affidavits can be afforded minimal weight as evidence of the applicant's residence in the United States for the requisite period.

In summary, the applicant has not provided any evidence of residence in the United States relating to the period from 1982 to 1984 or of entry to the United States before January 1, 1982 except for his own admittedly inconsistent assertions and the statements and affidavits noted above. The statements and affidavits lack credibility and probative value for the reasons noted. Moreover, the record shows that the applicant has contradicted the assertions made in those statements by testifying that he resided outside of the United States before 1987, regardless of the reasons he has given for providing such testimony. Although the applicant has provided proof of residence in the United States before 1987, such proof does not cover the entire requisite period. His contradictory testimony also raises doubts as to his current claims of residency.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of his application. It is incumbent upon the 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, 591-92 (BIA 1988).

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, as well as the inconsistencies and contradictions noted in the record, seriously detract from the credibility of his 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 inconsistencies in the record and the lack of credible supporting documentation, it is concluded that he has failed to establish by a preponderance of the evidence that he has continuously resided in an unlawful status in the United States for the requisite period 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.