

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



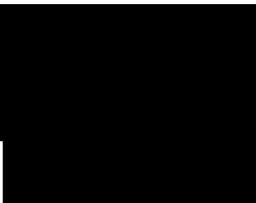
U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

4

JUL 10 2007

FILE:



MSC 05 174 10011

Office: Columbus

Date:

IN RE:

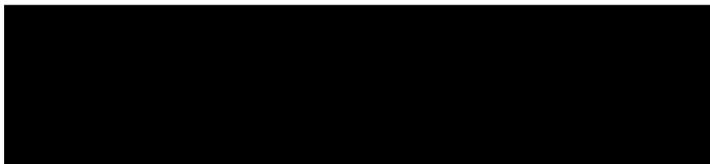
Applicant:



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

The district director determined that 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 between May 5, 1987 to May 4, 1988. Therefore, the district director concluded 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 contends that the applicant has submitted sufficient evidence to establish his continuous residence in this country for the requisite period. Counsel asserts that the applicant is unable to produce any further documentation in support of his claim of residence in the United States for the period in question because he was child who did not attend school or have a legal job. The applicant provides copies of previously submitted documentation and his own statement in support of his appeal.

An alien applying for adjustment to temporary resident status must establish that he or she entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through the date the application is filed. Section 245A(a)(2)(A) of the Immigration and Nationality Act (Act) and 8 C.F.R. § 245a.2(b).

An alien 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 and 8 C.F.R. § 245a.2(b)(1).

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.

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.

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 March 23, 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 [REDACTED] in New York, New York from October 1981 to December 1985 and [REDACTED] in New York, New York from January 1986 through at least the date of the termination of the original legalization application period on May 4, 1988. In addition, at part #33 of the Form I-687 application where applicants were asked to list all employment in the United States since January 1, 1982, the applicant listed “self employed” and the “Gap” as employers but failed to list any

dates for such employment. Further, the applicant failed to include any documentation in support of his claim of continuous residence in this country for the period in question.

The record shows that the applicant subsequently appeared for an interview relating to his Form I-687 application at the Citizenship and Immigration Services office in Columbus, Ohio on December 9, 2005. The record shows that the applicant was provided a notice of intent to deny by the interviewing officer on this date that specifically informed him that he had failed to submit evidence to establish continuous residence in the United States since prior to January 1, 1982. The applicant was granted twelve weeks to provide evidence in support of his claim of residence in this country since prior to January 1, 1982.

In response, the applicant submitted an affidavit that is signed by [REDACTED]. [REDACTED] noted that he worked in a restaurant where the applicant regularly bought coffee from 1985 to December 25, 2005 the date the affidavit was executed. [REDACTED] indicated that the applicant worked as street vendor at Broadway and 28<sup>th</sup> Street at the time they first met. Although [REDACTED] attested to the applicant's residence in the United States from 1985 onwards, he failed to provide any testimony relating to the applicant's residence in the United States from prior to January 1, 1982 through 1985. In addition, [REDACTED]'s testimony failed to include any pertinent and verifiable information, such as the applicant's address(es) of residence, to confirm the applicant's claim of residence in this country from 1985 to May 4, 1988.

The applicant provided an affidavit signed by [REDACTED] who indicated that she first met the applicant "prior to the year 1984" when he worked as a gas station attendant at [REDACTED] and [REDACTED] in New York, New York. [REDACTED] stated that she had been acquainted with and known the applicant since. However, [REDACTED]'s testimony that the applicant worked as a gas station attendant conflicted with the applicant's listing of employment at part #33 of the Form I-687 application as the applicant failed to list any employment as a gas station attendant for any date including the requisite period. Further [REDACTED] failed to offer any direct and specific testimony that the applicant resided in the United States from prior to January 1, 1982.

The district director determined that the applicant failed to submit sufficient credible evidence demonstrating his residence in the United States in an unlawful status from January 1, 1982 through May 4, 1988, and, therefore, denied the Form I-687 application on March 22, 2006.

On appeal, both counsel and the applicant claim that the CIS officer who conducted the applicant's interview on December 9, 2005 led the applicant to believe that he was eligible to adjust to temporary residence. Counsel and the applicant contend that the applicant has submitted sufficient evidence to establish his continuous residence in this country for the requisite period. Counsel and the applicant assert that he is unable to produce any further documentation in support of his claim of residence in the United States for the period in question because he was child who did not attend school or have a legal job. However, as discussed above, the record shows that the applicant was provided a notice of intent to deny by the interviewing officer on December 9, 2005 that specifically informed him that he had failed to submit evidence to establish continuous

residence in the United States since prior to January 1, 1982. While it is acknowledged that the fact that the applicant was a child during the period in question may create difficulties in obtaining documentation to support his claim of continuous residence, it cannot excuse the fact that he has failed to provide sufficient evidence to support his claim of residence in the United States since prior to January 1, 1982. The contention that the two affidavits submitted in response to the notice of intent to deny are sufficient to establish the applicant's continuous residence in this country for the requisite period is without merit as these affidavits do not include any specific verifiable information, such as the applicant's address(es) of residence, to confirm the applicant's claim of residence in this country from the date each affiant claimed to have met the applicant to May 4, 1988.

The lack of sufficient credible evidence that provides relevant and material testimony to corroborate the applicant's claim of continuous residence for the 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. The applicant has failed to any 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 any 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.