

PUBLIC COPY

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

LI



FILE: [REDACTED]
MSC-05-236-11494

Office: Los Angeles

Date: JUL 30 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.¹ 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 May 24, 2005. 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 his Form I-687 application was considered filed 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.

The director issued a Notice of Intent to Deny (NOID) the I-687 application on December 29, 2005, noting that the two affidavits submitted by the applicant in support of his claim lacked sufficient detail, were inconsistent with information provided on the application, and were not credible. The director also noted that the applicant indicated on Form I-687 that his first address in the United States dated from June 1981 (residence since first entry), but that he claimed to have been working in the United States since April 1981. The applicant provided a letter in rebuttal, explaining that he left the United States in December 1986 for 30 days and returned in January 1987 and that this was not inconsistent with the affiants' statements that he continuously resided in the United States from 1981 to 1987. The director's decision found that the applicant had failed to overcome the grounds for denial stated in the NOID. The decision also noted that the applicant stated that he had no documentation to show residence for the required years.

On appeal, the applicant, through counsel, asserts that the April 1981 date of employment in his application was a typographical error and should have been June 1981; he also submits new affidavits, dated April 11, 2006, from [REDACTED] and [REDACTED], who had submitted similar affidavits in support of his application in December 2005. The 2006 affidavits reiterated, in practically duplicate language, that the applicant is a person of good moral character, he resided continuously in the United States from 1981 until the time he left in 1988; and that the affiants encountered the applicant during parties and gatherings in the United States from 1981 until 1988. [REDACTED] 2006 affidavit included a statement that she is "able to determine [her] acquaintance with the applicant because [she has] known the applicant since childhood in the Philippines." Her 2005 affidavit, however, included a similar

¹ The district director issued the decision on January 28, 2006. An appeal was timely filed on February 28, 2006, but rejected by the Missouri Service Center for failure to include the "Receipt Number" associated with the underlying application. The appeal was filed again on March 14, 2006, with the Receipt Number, but rejected again for the same reason; the appeal was filed a third time on March 27, 2007, but rejected as untimely filed. It appears that this decision was re-opened *sua sponte* and the appeal was accepted as timely filed.

statement that she is “able to determine the date of [her] acquaintance with the applicant in the United States from 1981 – 1987 during gatherings, reunions and other celebrations,” failing to note that she had known him since childhood in the Philippines.

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).

For purposes of establishing residence and physical 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 applicant 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 applicant 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 establish his continuous unlawful 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 during the period between May 5, 1987 and May 4, 1988; and to establish his continuous physical presence in the United States from November 6, 1986 through the date he tried to apply for legalization during that period from 1987 to 1988. Here, the submitted evidence is not sufficient; the two affidavits submitted are not relevant, probative and credible.

The record shows that the applicant submitted his Form I-687 application to CIS on May 24, 2005. At part #30 of the Form I-687, where applicants are asked to list all residences in the United States since first entry, the applicant listed two addresses, the first from June 1981 to November 1988 at [REDACTED] Los Angeles, California; and the second from April 2002 to the present at [REDACTED], also in Los Angeles. At part #32, which asks the applicant to list all absences from the United States since entry, the applicant listed two family visits to the Philippines, from December 1986 to January 1987, and from November 1988 to April 2002. At part #33, the applicant listed two periods of employment in the United States since entry, the first as landscaping at various locations in the Los Angeles area from April 1981 to February 1988, and the second as warehouse work for Pioneer Distributor in Van Nuys, California from September 2002 to the present. There is no document in the record regarding the applicant's claimed employment from 1981 to 1988. The record includes a copy of a page of the applicant's passport indicating it was issued in June 2000; a copy of a B1/B2 visa issued in Manila in March 2002; and a copy of the applicant's form I-94 indicating that he was admitted to the United States at Los Angeles on a B1 visa on April 3, 2002, valid until May 2, 2002.

As evidence of continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided the affidavits of two acquaintances. The record contains two affidavits from each acquaintance, as similar affidavits were submitted in 2005 and on appeal in 2006. As noted above, the 2006 affidavit from [REDACTED] included contradictory information that the affiant had known the applicant since childhood in the Philippines, while her 2005 affidavit indicated she knew him in the United States through encounters and gatherings. That inconsistency undermines the credibility of the information. Moreover, other than stating that they have known each other during the relevant time period in the United States, the affiants provided no detail regarding their relationship with the applicant. The record lacks any other document that might lend credibility to the applicant's claim of residence in the United States for the required time period. The applicant's statements are also inconsistent and not probative. He blames the inconsistent dates on his I-687 application regarding employment and entry on a typographical error. The sole credible document in the record is the applicant's entry document showing he entered the United States in 2002.

Regarding entry and residence in the United States during the statutory period, other than the affidavits noted above, there is no documentary evidence of residence from 1981 through 1988. Although the applicant claimed on the I-687 application that he had worked at various locations in the Los Angeles area during that period, he did not provide a single document related to his employment for those years. For

the above noted reasons, the documents submitted as evidence of entry and residence lack relevance, probative value and credibility.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the period from 1981 through 1988. The two documents submitted are insufficient to support the applicant's claims of residency and contain inconsistent and contradictory information. His failure to provide any documentation to support his work history also diminishes the weight of his statements.

The absence of sufficiently detailed supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, as well as the inconsistencies 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 lack of supporting documentation, inconsistencies in the record and 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--*, *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.