

PUBLIC COPY

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



**U.S. Citizenship
and Immigration
Services**

LI

[REDACTED]

FILE: [REDACTED]
MSC 04 356 11227

Office: CHICAGO

Date: **SEP 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. 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, Chicago, Illinois, 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, the applicant asserts he has lived in the United States for over 20 years and claims that he never received the notice of intent to deny (NOID). However, the record shows that the NOID was sent to the applicant's last known address of record, which is the same address that appears on the applicant's Form I-694, Notice of Appeal of Decision, and the same address where the denial notice was sent. As such, the applicant's claim of not having received the NOID cannot be verified. The discussion below will review all of the documentation submitted thus far in support of the applicant's claim of unlawful residence since prior to January 1, 1982.

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 the United States since prior to January 1, 1982, the applicant provided the following documentation:

1. An affidavit dated December 15, 1991 from [REDACTED] in which the affiant claimed to be a good friend of the applicant. The affiant further stated that he and the applicant lived at [REDACTED] from February 1979 through and including the date of the affidavit.
2. Envelopes addressed to the applicant at [REDACTED] Chicago, Illinois, his claimed address from February 1979 to 1992. The dates stamped on several of these envelopes are illegible. Other envelopes whose date stamps are legible are dates stamped with various months in 1985.
3. An affidavit dated December 15, 1991 from [REDACTED] which the affiant stated that he lived with the applicant from February 1979 through and including the date

of the affidavit. The affiant further claimed that all utility bills were in his name. The address of the claimed residence was not provided in the affidavit.

4. An affidavit dated August 20, 1991 from [REDACTED] claiming to have known the applicant since 1979 at which time the applicant resided at [REDACTED]. The affiant further claimed that he and the applicant worked together from 1979 to 1985 at [REDACTED] at [REDACTED]. The affiant stated that the claimed employer changed its name to [REDACTED]. The affiant did not specify when the name change took place.
5. Rent receipts for the applicant's claimed residence at [REDACTED] for March/April 1979, April/May 1980, January/February 1983, and June/July 1985, July/August 1987.
6. A partially torn pay stub for the applicant dated September 19, 1985. The information provided in the pay stub included the applicant's name, the number of hours worked, his salary, and his various deductions. The name of the employer is not provided in the portion of the pay stub that is legible.

The AAO also notes that another rent receipt and further pay stubs were provided for years 1990 forward. As this documentation does not establish the applicant's residence in the United States during the relevant time period, it need not be addressed in this discussion.

On April 3, 2006, the district director issued a notice of his intent to deny the applicant's Form I-687 based on adverse information discovered during the course of reviewing the evidence and information provided by the applicant in support of the application. Specifically, the district director stated that the applicant's claim regarding his employment for [REDACTED] from February 1979 to May 1990 lacked credibility. This determination was based on documentation that revealed that Del Kay Corporation was not incorporated until June 24, 1985.

On June 8, 2006, the district director denied the application, concluding that the applicant failed to overcome the adverse findings cited in the NOID and, therefore, failed to establish his continuous unlawful residence in the United States during the prescribed time period.

On appeal the applicant reiterates his claimed unlawful residence during the relevant time period. However, there is no evidence on record that either explains or resolves the adverse finding cited by the district director. Additionally, Citizenship and Immigration Services (CIS) has determined that affidavits from third party individuals may be considered as evidence of continuous residence. *See Matter of E-M-*, 20 I&N Dec. 77. In ascertaining the evidentiary weight of such affidavits, CIS must determine the basis for the affiant's knowledge of the information to which he is attesting; and whether the statement is plausible, credible, and consistent both internally and with the other evidence of record. *Id.* In the present matter, the applicant's claimed residence in the United States from prior to January 1, 1982 through 1984 and from 1986 through the date the applicant attempted to file the Form I-687 is largely supported by the affidavits,

which the AAO deems insufficient. First, the AAO notes that the information to which [REDACTED] attested in his affidavit is inconsistent with information provided by the applicant. Namely, Mr. [REDACTED] stated that the applicant worked at [REDACTED] which subsequently changed its name to [REDACTED], from 1979 to 1985. However, in No. 33 of the most recent Form I-687 filed September 20, 2004, the applicant stated that his employment with [REDACTED] did not commence until July 1991 and ended in 1992. Contrary to claims made by [REDACTED], the applicant stated that from February 1979 to May 1990 he worked at [REDACTED] a claim that is also compromised by information suggesting that [REDACTED] was not incorporated until 1985.

Second, while [REDACTED] attested to his knowledge of the applicant's residence in the United States since 1979, he failed to disclose how and when he became acquainted with the applicant and the nature of their relationship.

Third, while [REDACTED] attested to the applicant's living arrangement since February 1979, he failed to state the address of the residence that he and the applicant purportedly occupy and how he became acquainted with the applicant such that the applicant became [REDACTED] roommate.

Lastly, the AAO makes note of the rent payment receipts submitted in support of the applicant's claimed residence at [REDACTED]. Specifically, all of the receipts, whether dated 1980 or 1990, are purportedly signed by [REDACTED]. However, the signatures that appear on the various receipts are vastly distinct from one another. In fact, the signature on the rent receipt for January/February 1983 appears to be that of a [REDACTED] rather than [REDACTED]. Furthermore, the applicant did not submit any documentation establishing that [REDACTED] had the position title and authority to accept rent payment on behalf of the apartment purportedly rented by the applicant. The AAO further observes that all of the rent payment receipts suggest that the applicant never paid more than \$200 per month in rent even though he purportedly resided at the same residence for approximately 13 years.

In summary, the record contains contemporaneous evidence to account for the applicant's residence in 1985 and from 1990 forward. The record lacks contemporaneous evidence to account for the applicant's residence in the United States from prior to January 1, 1982 to 1984 and from 1986 through the date the applicant attempted to file his Form I-687 application. While the applicant has provided additional evidence in the form affidavits to support his claim, at least one affidavit has provided information inconsistent with that provided by the applicant and the remaining affidavits fall short of meeting the evidentiary requirements.

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.