

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

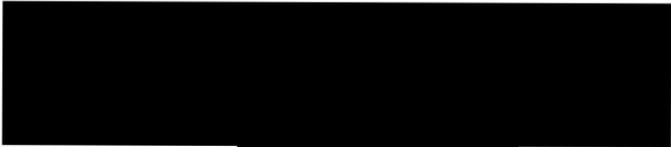
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



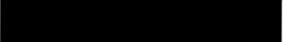
U.S. Citizenship
and Immigration
Services

PUBLIC COPY

L1



FILE:



MSC-05-312-12850

Office: NEW YORK

Date: APR 14 2008

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:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

A handwritten signature in black ink, appearing to read "D. King".

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, New York. 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. 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. 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 asserts his claim of eligibility for temporary resident status and submits additional documentation as evidence.

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 November 6, 1986. Section 245A(a)(3) of the Act, 8 U.S.C. § 1255a(a)(3). The regulations clarify that the applicant since 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. *See* 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.* at 80. 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, 431 (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 meet his or her burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on August 8, 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 showed his first address in the United States to be 4 [REDACTED], New York, New York, from October of 1981 to October of 1987; and [REDACTED] New York, New York, from October of 1987 to January of 1995.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted an affidavit from [REDACTED] in which he stated that he has known the applicant since the early 1980s, and that the applicant is intelligent and talented. Here, the affiant fails to specify when during the early 1980s he met the applicant. In addition, the affiant fails to indicate how he met the applicant or the frequency in which he saw the applicant during the requisite period. There is no evidence that the affiant himself was present in the United States during the requisite period. He has failed to provide any relevant and verifiable testimony, such as the applicant's place of residence in this country during that period, to corroborate the applicant's claim of residence in the United States since prior to January 1, 1982. The affidavit lacks detail that would lend credibility to the claimed relationship the affiant has with the applicant. Because this letter is lacking in detail and probative value, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

In response to the director's request for additional evidence, the applicant submitted two postmarked envelopes addressed to the applicant at [REDACTED], New York, New York, and

dated November of 1981 and February of 1982. This evidence contains information that is inconsistent with what the applicant stated on his Form I-687 application, in that the applicant specifically indicated at part # 30 of his application that he resided at [REDACTED], New York, New York, from October of 1981 to October of 1987. This inconsistency calls into question the applicant's ability to confirm that he resided in the United States during the requisite period. Because this evidence contains information that conflicts with what the applicant showed on his Form I-687 application, doubt is cast on the assertions made. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. *Id.* Any attempt to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Id.* at 591-92. Because this evidence conflicts with other evidence in the record it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

In denying the application the director noted that the single affidavit submitted by the applicant lacked detail and was insufficient to show that the applicant resided in the United States since prior to January 1, 1982. The director also determined that the applicant's travel documents were insufficient to establish his residency during the requisite time period.

On appeal, the applicant asserts that the director failed to take into consideration the postmarked envelopes he had submitted as evidence. The applicant reasserts his claim of eligibility for temporary residence status. The applicant submits copies of his postmarked envelopes; an affidavit dated September 12, 2006 from [REDACTED] and a photocopy of [REDACTED]'s New York Driver License. In the affidavit [REDACTED] states that he met the applicant on February 19, 1981 when he received a phone call from the applicant's uncle informing him that the applicant would be traveling to the United States. He also states that the applicant told him that he had traveled to New York from Canada by bus. The affiant further stated that the applicant stayed with him and was self-employed. Here, it appears that the affiant's attestation is not based upon first hand knowledge, but rather information that he received from the applicant and the applicant's uncle. In addition, there is no evidence in the record to demonstrate that the affiant himself was present in the United States throughout the requisite period.

In the instant case, the applicant submitted an attestation from [REDACTED] that was lacking in detail and did not demonstrate the declarant's presence in the United States throughout the requisite period. The postmarked envelopes that were submitted by the applicant contained addresses that were inconsistent with the information the applicant put on his Form I-687 application. Furthermore, the affidavit from [REDACTED] does not appear to be based upon his firsthand knowledge of the events and circumstances surrounding the applicant's residence in the United States throughout the requisite period.

The absence of sufficiently detailed 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

contradictory statements on his Form I-687 application and his 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 for the requisite period 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.