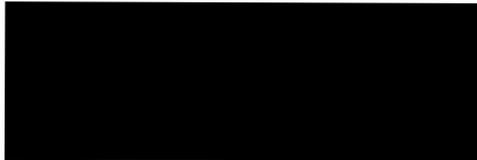


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61

FILE: [REDACTED]  
MSC 05 294 11208

Office: NEWARK

Date: **APR 24 2008**

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. 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.

← 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, Newark, and 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. Specifically, the director concluded that the applicant failed to submit sufficient affidavits or other corroborating evidence to overcome the adverse findings cited in the notice of intent to deny (NOID). Accordingly, the director denied the application concluding 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, counsel for the applicant challenges the director's decision asserting that the applicant is eligible for class membership and for temporary resident status.

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). The applicant must also establish that he or she has been continuously physically present in the United States since November 6, 1986 until the date of filing the application. 8 C.F.R. § 245a.2(b)(1).

Under the CSS/Newman Settlement Agreements, 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 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, 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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided in the United States during the requisite time period. Here, the applicant has not met this burden.

In support of the Form I-687, the applicant provided three affidavits. The undated affidavit from [REDACTED] states that the affiant has known the applicant since 1987. As properly noted by the director, the affiant was only two years old in 1987. As such, the AAO questions the affiant's capacity to attest to anything that may have happened at a time when he was only two years old. Moreover, when the applicant submits the written testimony of an affiant who is not qualified to attest to the information found in his affidavit, the AAO must question the applicant's credibility. The applicant also provided an affidavit dated April 26, 2005 from [REDACTED] who stated that she has known the applicant since 1983. In light of this initial statement, it is unclear why the affiant provided the address where she claimed the applicant was residing in 1982. The fact that she did not claim to know the applicant prior to 1983 gives rise to serious doubt as to this affiant's capacity to attest to any aspect of the applicant's residence prior to such time. Furthermore, the affiant stated that the applicant's address in 1982 was at [REDACTED], Paterson, NJ. However, in response to question No. 30 of the Form I-687, the applicant stated that he was living in the State of Nevada in 1982 and continued to do so until 1983, when he moved to [REDACTED], Paterson, NJ. Thus, even if [REDACTED] had known the applicant in 1982, her testimony with regard to his state of residence is inconsistent with that of the applicant's and, contrary to the information provided by this affiant, the applicant never claimed that he resided at 110 Marshall St. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The third and final affidavit, also dated April 26, 2005, was from [REDACTED], the applicant's sister, who claimed that the applicant resided with her in Nevada from December 15, 1981 to March 1983 when he purportedly moved to Paterson, NJ. While this affiant's claims are not inconsistent with information provided by the applicant, the fact that the applicant has provided two other affidavits that are deficient in content and credibility casts doubt on the credibility of the information found in this affidavit as well. *See id.*

Accordingly, the notice of intent to deny, dated July 28, 2006, was properly issued. The director accurately noted that [REDACTED] claimed to have known the applicant since 1987, when the affiant was only two years old, and also correctly observed that [REDACTED] only claimed to have known the applicant since 1983. Thus, neither affiant can attest to the applicant's physical presence in the United States since prior to 1982. Additional adverse findings are made by the AAO above, thus giving weight to and further support for the director's ultimate decision to deny the application. However, the AAO notes that the director erroneously suggests that the applicant's Form I-687 would have been approved if it had been submitted at the same time as that of his sister. The director also improperly assumes that both individuals would have had access to the same supporting documentation. As such, these erroneous comments and observations will be withdrawn and given no weight in the AAO's current decision. Regardless, the director's underlying basis for the September 15, 2006 denial was correct and the overall adverse decision was warranted, as indicated by the AAO's analysis of the submitted affidavits and the applicant's failure to provide sufficient credible documentation.

On appeal, counsel challenges the director's decision and submits a brief expanding on her arguments, none of which overcome the director's decision. First, with regard to counsel's claim that the applicant did not attend school because he was unaware of his right to do so and because he did not speak English, such claims from counsel will not satisfy the applicant's burden of proof. As previously stated above, the applicant has provided minimal evidence to support his claim and what evidence he did provide was primarily lacking in probative value due to its lack of content and credibility. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Second, with regard to counsel's assertions that the applicant qualifies as a class member under the provisions of the CSS/Newman Settlement Agreements, this factor is undisputed in the director's denial. This is evident by the very fact that the adverse decision was based on the applicant's statutory eligibility for temporary resident, not on his perceived failure to establish class membership. As such, this portion of counsel's argument is irrelevant.

Lastly, counsel disputes several of the director's comments, which she deems erroneous. The AAO is in agreement with counsel on this point and has withdrawn the questionable comments in the above discussion. Nevertheless, the remaining deficiencies in the record preclude a favorable determination. Primarily, 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.