

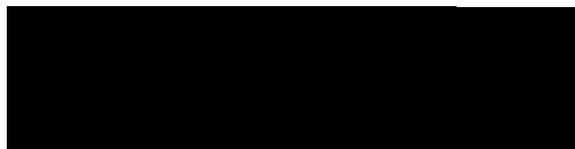
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U.S. Department of Homeland Security  
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U.S. Citizenship  
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Services

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FILE:

MSC-05-237-11787

Office: NEW YORK

Date:

**APR 30 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:



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, counsel asserts that the applicant has met his burden of proof.

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). The regulations clarify that the applicant 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).

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) 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 May 25, 2005.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted the following attestations:

- An affidavit from [REDACTED] in which he stated that the applicant and his father came to the United States before 1982 and have lived in the country since. He also listed the applicant’s addresses as: [REDACTED] Elmhurst, New York, from April of 1985 to June of 1986, and [REDACTED], Woodside, New York, from July of 1986 to May of 1991. Here, there is no evidence to demonstrate that the affiant’s statements are based upon first hand knowledge of the applicant’s circumstances throughout the requisite period. Although the affiant states that the applicant arrived in the United States prior to 1982, he fails to demonstrate his relationship with the applicant prior to 1982. He fails to show the frequency in which he saw the applicant during the requisite period. There is nothing in the record to demonstrate that the affiant himself was present in the country throughout the requisite period. The affiant fails to explain what type of relationship he had with the applicant who was 5 years old when he allegedly arrived in the United States. The affidavit is significantly lacking in detail and therefore, can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

- An affidavit from [REDACTED] in which he stated that he knows that the applicant and his father came to the United States prior to 1982, and that he was the applicant's roommate from July of 1986 to May of 1991 at [REDACTED], Woodside, New York. Here, the affiant fails to demonstrate his knowledge of the applicant's whereabouts prior to July of 1986. He fails to submit corroborating evidence such as lease agreements, rent receipts, cancelled checks, utility bills to substantiate his claim. There is nothing in the record to show that the affiant's statements are based upon his firsthand knowledge of the applicant's circumstances throughout the requisite period. The affiant has failed to demonstrate that he himself was present in the United States throughout the requisite period. The affidavit is significantly lacking in detail and therefore, can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.
- An affidavit from [REDACTED] in which he stated that he has known the applicant since 1982 and that the applicant and his father came to the United States before 1982. He further stated that he would visit the applicant's home to meet with his father, who is his close friend. The affiant fails to state how and where he first met the applicant. There is nothing in the record to demonstrate the frequency with which the affiant saw the applicant during the requisite period. There is nothing in the record to demonstrate that the affiant himself was present in the United States throughout the requisite period. The affiant has failed to provide any relevant and verifiable testimony, such as the applicant's place of residence in this country, to corroborate the applicant's claim of residence in the United States since prior to January 1, 1982. The affidavit is significantly lacking in detail and therefore, can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.
- An affidavit from [REDACTED] in which he stated that the applicant and his father lived with him at [REDACTED], New York from October of 1981 to March of 1985. He further stated that he paid all the bills and that the applicant's father paid their share of the expenses. Here, the affiant fails to submit corroborating evidence such as utility bills, cancelled checks, invoices in order to substantiate his claim. The affiant fails to demonstrate that he himself was present in the United States throughout the requisite period. There is nothing in the record to show that the affiant's statements are based upon his firsthand knowledge of the applicant's circumstance throughout the requisite period. It is also noted that the applicant stated under oath during his interview with immigration officers on March 8, 2006 that he lived at the above noted address for five years, which is contradictory to the affiant's statement. The affidavit is significantly lacking in detail and therefore, can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

In a Notice of Intent to Deny (NOID) submitted to the applicant, the director noted that the affidavits he submitted were not credible or amenable to verification, and are called into question concerning their possible fraudulent nature.

In response to the director's NOID, counsel asserts that the affidavits submitted by the applicant are credible and that they are not fraudulent. He submits no additional evidence as requested by the director.

In denying the application, the director noted that the applicant's attorney failed to overcome the reasons indicated in the NOID for the intent to deny the Form I-687 application; and that therefore, the applicant has failed to meet his burden of proof that he continuously resided in the United States since prior to January of 1982.

On appeal, counsel asserts that the evidence submitted by the applicant is not fraudulent, but is credible and sufficient to substantiate his claim of continuous residence in the United States since before January 1, 1982. He does not submit any additional evidence on appeal.

In the instant case, the applicant has not provided sufficient, probative evidence of his continuous unlawful residence in the United States since prior to January 1, 1982. After giving due weight to the evidence submitted by the applicant, it is determined that he has submitted attestations that are significantly lacking in detail and therefore, can be accorded only minimal weight in establishing that the applicant resided in the United States throughout the requisite period. The applicant has failed to submit corroborating evidence to substantiate his claim of continuous unlawful residence in the United States since October 23, 1981. He has not submitted any school records or medical records to demonstrate his presence in the country as a 5-year-old child. Furthermore, the applicant has failed to provide independent documentary evidence to substantiate the claims made by the affiants.

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 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.