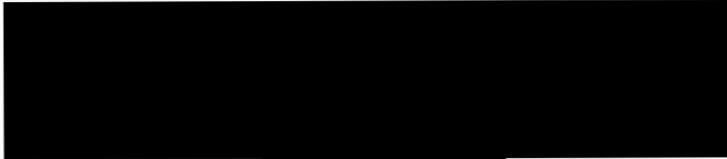


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U.S. Citizenship
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Services

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FILE: [REDACTED]
MSC-05-272-12734

Office: LOS ANGELES

Date: **APR 30 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: 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 "R. Wiemann", written over a light-colored rectangular background.

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. 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 states that he has submitted sufficient proof and corroborating statements sufficient to establish his eligibility. He further states that he has submitted all evidence that was requested.

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 June 29, 2005. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since his first entry, he listed [REDACTED] Los Angeles, California, as his residence from 1981 to 1985; [REDACTED] Los Angeles, California, as his residence from 1986 to 1991; and [REDACTED] Lawndale, California, as his residence from 1991 to 1992. Similarly, at part #33, he listed his first employment in the United States to be for Exotic Nursery from 1981 to 1984; and that he was self-employed from 1981 to the date of filing, June 29, 2005.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided as evidence copies of Verizon utility bills, Order Express invoices, Glidden Paint sales receipts, Golden State Paint receipts, Bank of America statement, Southern California Edison bills, Southern California Gas bills, GTE California utility bills, handwritten merchandise receipts, California Identification Card, Greyhound Bus receipt, DMV printout, work statements, medical receipt, rent receipts, and Internal Revenue Service income tax payment notices. This documentation is dated from October of 1988 to 2006 and does not relate to the requisite period therefore, it will not be considered as evidence of the applicant's residence in the United States since before January 1, 1982.

The applicant submitted the following evidence dated during the requisite period:

- A copy of the applicant's California Identification Card issued January 31, 1985;
- A copy of an untranslated letter from the Catholic Charities dated August 20, 1987; and,

- A copy of a handwritten pay statement from [REDACTED] dated November of 1981.

This evidence is insufficient to demonstrate the applicant's continuous unlawful residence in the United States since before January 1, 1982. The applicant's California Identification Card demonstrates his presence in the United States in 1985. The petitioner failed to submit certified translations of the letter written by Catholic Charities, therefore, the AAO cannot determine whether the evidence supports the petitioner's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding. The handwritten pay statement conflicts with information contained in the applicant's Form I-687 application where he fails to list at part #33 Avalon Shutters Company as his employer. This inconsistency calls into question the authenticity of the document submitted. It is further noted that the applicant failed to submit an employment letter or other corroborating evidence sufficient to support the information contained in the pay statement.

The applicant also submitted the following attestations:

- A letter from [REDACTED] of Los Angeles Piece Dye Works in which he stated that the company employed the applicant from March 15, 1982 to September 30, 1985. The declarant further stated that the applicant's social security number was [REDACTED]. The declarant included a copy of his company business card. This statement is inconsistent with the statement made by the applicant on his Form I-687 application at part #33 where he fails to list the Los Angeles Piece Dye Works as his employer. This inconsistency calls into question the declarant's ability to confirm that the applicant resided in the United States during the requisite period. Because this declaration contains inconsistent statements, 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 visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). In addition, the attestation does not conform to regulatory standards for attestations by employers. Specifically, the affiant does not specify the address(es) where the applicant resided throughout the claimed employment period, nor does the declarant indicate whether the employment information was taken from company records. Neither has the availability of the records for inspection been clarified. 8 C.F.R. § 245a.2(d)(3)(i). In addition, the record does not contain copies of pay statements, personnel records, Internal Revenue Service records, W-2 Forms, certification of filing of Federal income tax returns, or time cards that pertain to the requisite period to corroborate the assertions made by the declarant. Because this letter is inconsistent with statements made by the applicant and does not conform to regulatory standards, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.
- A letter dated July 12, 2002, from [REDACTED] in which he stated that the applicant had been a tenant of his since 1985. Here, the declarant fails to specify where the applicant

resided. He fails to state when in 1985 he met the applicant. There is no evidence in the record to demonstrate that the declarant himself was present in the United States during the requisite period. The declarant has failed to show how often he saw the applicant. It is further noted that the declarant's statement is insufficient to support the applicant's claim of continuous residence in the United States since before January 1, 1982. Because this letter lacks specificity, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

- A letter from [REDACTED] of Exotic Nursery in which he stated that the company employed the applicant to perform agricultural duties from November 10, 1981 to December 15, 1984. Mr. [REDACTED] further stated that the applicant was employed on a full-time basis, six days a week, at \$4.00 per hour. The declarant stated that during the above noted period, the applicant was paid in cash, with no responsibility on the part of the company concerning social security, taxes, or auditor tax. The attestation does not conform to regulatory standards for attestations by employers. Specifically, the affiant does not specify the address(es) where the applicant resided throughout the claimed employment period, nor does the declarant indicate whether the employment information was taken from company records. Neither has the availability of the records for inspection been clarified. 8 C.F.R. § 245a.2(d)(3)(i). In addition, the record does not contain copies of time cards or attendance sheets that pertain to the requisite period to corroborate the assertions made by the declarant. Because this letter does not conform to regulatory standards, 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 attestations submitted by the applicant did not contain specific information pertaining to his initial residence in the United States and did not include corroborative evidence to substantiate the claims.

On appeal, the applicant reasserts his claim of eligibility for temporary resident status and states that he has submitted sufficient proof and corroborating statements sufficient to establish his eligibility. He further states that he has submitted all evidence that was requested. He does not submit any additional evidence on appeal.

In the instant case, the applicant has failed to provide sufficient, probative evidence to establish his continuous unlawful residence in the United States since prior to January 1, 1982. It is noted that he submitted copies of documents that were dated from October of 1988 to 2006 that were irrelevant to his claim of eligibility. It is further noted that although the applicant submitted evidence of his presence in the country during 1985, the single handwritten pay statement was insufficient to demonstrate his presence since prior to January 1, 1982. The attestations submitted by the applicant were inconsistent with the information he provided on his Form I-687 application and were not accompanied by corroborative evidence. The applicant stated during his interview with the immigration officer in January of 2006 that he was absent from the United States in December of 1982 and in 1986. The applicant failed to list these absences on his Form I-687 application at part # 32. It is also noted that the applicant's social security card number used by [REDACTED] of Los Angeles Piece Dye Works was [REDACTED], and

that that number differs from the social security card number used by the Social Security Administration in the letter to the applicant dated June 7, 1991, which was [REDACTED]. There has been no explanation given by the applicant for these numerous discrepancies. The applicant claims that he has submitted all documents requested and that ample corroborating evidence was submitted, sufficient to demonstrate his eligibility for the immigration benefit sought, however, a review of the record shows that the applicant has failed to demonstrate by a preponderance of the evidence that he has resided 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 reliance upon documents that are irrelevant to the requisite period, are inconsistent with his statements, or have 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.