

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



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

PUBLIC COPY

U

FILE:

MSC-05-186-12392

Office: BOSTON, MA

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:

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 "Robert P. Wiemann".

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 Acting District Director, Boston. 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. Specifically, the director stated that at the time of the applicant's interview with a Citizenship and Immigration Services (CIS) officer on December 6, 2005, the applicant stated that he left the United States in the Summer of 1987 and did not return to the United States until 2001, which the record indicates is not consistent with the absences from the United States that the applicant showed on his Form I-687. The director went on to say that the applicant did not submit any evidence that he was eligible to adjust status to that of a temporary resident apart from his own testimony. The director noted 8 C.F.R. § 245a.2(d)(6), which specifies that applicants must provide evidence of eligibility for adjustment of status apart from their own testimony. Because the applicant failed to provide this evidence, the acting 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 that he is appealing the director's decision because he would like to be granted employment authorization. He submits a letter in support of his application.

It is noted that the director of the Boston District Office granted the applicant an additional interview in response to the applicant's Form I-694 Notice of Appeal of Decision on July 18, 2005. However, the record shows that the applicant did not appear for that interview.

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)(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) 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. 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 a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on April 4, 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 address in the United States during the requisite period to be “[redacted]” in Bronx, New York from August 1981 until December 1993. It is noted that the applicant did not provide a house or apartment number associated with this address. At part #32 where the applicant was asked to list all of his absences from the United States, he indicated that he had no absences during the requisite period. Here, he showed his first and only absence from the United States to have been from December 2000 until April 2001. At part #33, where the applicant was asked to list all of his employment in the United States since he first entered, he showed that he was employed as a vendor at various locations in New York from August 1981 until December 2000.

Also in the record are the notes from the CIS officer who interviewed the applicant. Here, the officer's notes taken at the time of the applicant's interview pursuant to his Form I-687 application on December 6, 2005 indicate that the applicant stated that he left the United States in 1987 during the summer and then returned to the United States in 2000. It is noted that it is not clear from the record when the applicant alleges he attempted to apply for legalization during the original filing period, which began on May 5, 1987. Therefore, it is unclear whether this absence fell within the requisite period for this applicant. However, it is clear that this absence is not consistent with what the applicant showed on his Form I-687 where he indicated that he was not absent from the United States until December 2000. That the applicant has not been consistent regarding when he was absent from the United States casts doubt on whether he has fully and completely represented his absences from the United States to CIS.

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 will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

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. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The applicant has the burden of proving by a preponderance of the evidence that he has resided in the United States for the requisite period. 8 C.F.R. § 245a.2(d)(5). To meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. 8 C.F.R. § 245a.2(d)(6). The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that an applicant may submit to establish proof of continuous residence in the United States during the requisite period. This list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts or letters. An applicant may also submit any other relevant document pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

Here, the applicant failed to submit evidence that he resided in the United States for the requisite period apart from his own testimony which, as was previously noted, was not consistent regarding his absences from the United States.

The director denied the application for temporary residence on March 3, 2006. In denying the application, the acting director stated that she found that the applicant's testimony that he entered the United States in 1981 and then resided in the United States until 1987 was not supported by any evidence other than his own testimony. Therefore, the director found that the applicant did not meet his burden of establishing that he resided continuously in the United States for the duration of the requisite period.

On appeal, the applicant asserts that he filed his appeal in order to obtain work authorization. He also submits a letter that is not notarized from an individual whose name is not legible that states in its entirety, "In 1982 I saw [redacted] in New York [sic.] City selling [sic.] handbags on the street." This letter is dated March 9, 2006. Here, the declarant does not submit proof of his or her identity with the letter.

He or she failed to show proof that he or she resided in the United States during the requisite period. It is not clear from this letter that the declarant knows that the applicant was residing in the United States in 1982 when he was selling handbags or at any time before or after 1982. As the declarant did not see the applicant until 1982, this letter carries no weight in establishing that the applicant entered the United States before January 1, 1982. Further, as the declarant does not state that the applicant was residing in the United States in 1982, it carries no weight in establishing that the applicant resided in the United States during the requisite period. As such, this letter does not allow the applicant to prove that he entered the United States before January 1, 1982 or that he then resided in the United States since that time and for the duration of the requisite period by a preponderance of the evidence.

In summary, the applicant has not provided any evidence of residence in the United States relating to the period from before January 1, 1982 until the end of the requisite period except for his own inconsistent assertions and the one letter noted above. The applicant's statement and the letter he submitted in support of his application lack credibility and probative value for the reasons noted.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, as well as the inconsistencies and contradictions noted in the record, seriously detract from the credibility of his 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 inconsistencies in the record and the lack of credible supporting documentation, it is concluded that he has failed to establish by a preponderance of the evidence that he has continuously resided in an unlawful status in the United States for the requisite period as required 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