

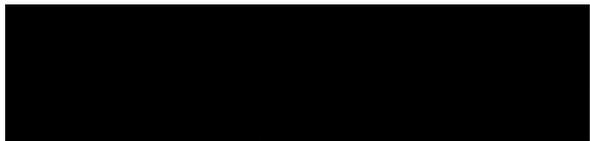


U.S. Citizenship
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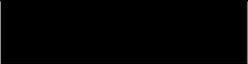
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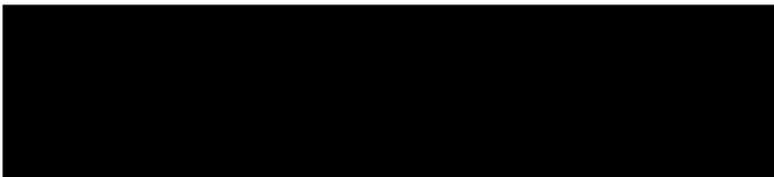
Applicant:



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. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

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, on September 10, 2004. The applicant was interviewed on May 16, 2006 in connection with his Form I-687. On that day the director issued a Form I-72, requesting proof of residence in the United States for the years 1981-1988. The applicant provided a response. After review of the documentation submitted, the director denied the application on August 16, 2006. On appeal, counsel for the applicant asserts that Citizenship and Immigration Services' (CIS) failed to take into consideration all of the evidence submitted and that the director's dismissal of the affidavits submitted is arbitrary and capricious. Counsel provides two additional affidavits to substantiate the claims of the other affiants.

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 applicant attempted to file the application. 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 or attempting to file the application. 8 C.F.R. § 245a.2(b)(1).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "until the date of filing" shall mean 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 periods, 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. See 8 C.F.R. § 245a.2(d)(6).

Even if the director has some doubt as to the truth, if the applicant 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 (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.

An applicant for temporary residence under the CSS/Newman Settlement Agreements need only 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 have been physically present in the United States from November 6, 1986 until the date of filing the application as defined above.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to establish his entry into the United States prior to January 1, 1982 and continuous unlawful residence since such date through the date he attempted to file the application.

On the Form I-687, the applicant listed his date of birth as February 22, 1956. In the space provided on the Form I-687 to list addresses, the applicant indicated he lived: at [REDACTED] in McFarland, California from July 1979 to August 1983; at [REDACTED] Delano, California from September 1983 to February 1984; at [REDACTED], Woodland Hills, California from March 1984 to January 1987; and at [REDACTED] Tarzana, California from February 1987 to February 1989. The applicant listed his places of employment during this time period as: JAT Farms in McFarland from July 1979 to August 1983; B&B Farms in Delano from September 1983 to February 1984; Woodland Hills Car Wash from March 1984 to June 1987; and Mac's Chevron in Woodland Hills from March 1989 to February 1997. The applicant does not list his employment from June 1987 to March 1989.

As part of his supportive documentation the applicant submitted copies of excerpts from Boston Globe articles from the summer of 1979 that deal with the sinking of the Liberian freighter Royal Sword after its collision with the tanker ship Exxon Chester off the Cape Cod coast in June of 1979. The articles prominently mention a 23 year-old crewmember of the tanker who is identified as coming from New Dehli, India, and who is variously named as "[REDACTED]" and "[REDACTED]." According to the newspaper excerpts, the captain, crew, and passengers of the tanker had to quickly abandon ship. The applicant asserts that he is that twenty-three year old crewmember and that, after the sinking, he remained

in the United States, traveling to California to the place where someone from his village was then living. The AAO finds that the newspaper excerpts do not sufficiently identify the twenty-three-year old sailor to enable a determination that the applicant and the crewman are the same individual. Even if the applicant is the same individual identified in the newspaper clippings and was present in the United States in June 1979 as a result of the shipwreck; this fact does not establish the applicant's continuous unlawful presence for the requisite period.

In an April 26, 2004 letter appended to the Form I-687, the applicant states that he entered the United States as a crewman after his merchant navy vessel sank off the Boston Coast in June 1979. He explains that his passport remained with the port authorities in Boston and that he moved to California as he knew someone from his village who was living in California. The record also contains a translated copy of a bachelor's degree of commerce conferred upon the applicant by the University of Delhi in 1976. The record further contains letters/affidavits that were before the director and were submitted to establish the applicant's residency in the United States for the applicable time periods:

- A September 13, 1990 affidavit by [REDACTED] declaring that the applicant resided with him at [REDACTED] in McFarland, California from July 1979 to August 1983.
- A September 12, 1990 affidavit from [REDACTED] declaring that the applicant resided with him at [REDACTED] Woodland Hills, California from March 1984 to January 1987
- A September 12, 1990 affidavit from [REDACTED] declaring that the applicant resided with him from February 1987 to February 1989 in Tarzana, California.
- An undated letter from [REDACTED] notarized on April 17, 2006, certifying that the applicant worked in "our fields" in McFarland and Delano during July 1979 to February 1984 and that he lived at the farmhouse located at [REDACTED] McFarland, California.
- A form affidavit dated March 26, 1991 from [REDACTED] declaring that he had known the applicant since 1981, that he knew the applicant was employed by Chevron, and that he knew that the applicant lived at [REDACTED] in Tarzana, California.
- An August 20, 1990 letter from the manager (name illegible)¹ of the BS Mac Chevron Service asserts that the applicant was employed at the Woodland Hills Car Wash from March 1984 to January 1997. A second letter dated August 20, 1990 from the manager of the BS Mac Chevron Service asserts that the applicant was

¹ The AAO observes that although both signatures are illegible, the manager's signature for the BS Mac Chevron Service in Woodland Hills, California is the same as the manager's signature for the Sherman Oaks Chevron in Sherman Oaks, California.

employed by the company since March 1989 and was working with them as of the date of the letter. A third letter from the manager (name illegible) of the BS Mac Chevron Service, dated June 12, 1990 asserts that the applicant had been employed as a manager by the company since March 1989.

- An August 20, 1990 affidavit from the manager (name illegible) of the Sherman Oaks Chevron in Sherman Oaks, California certifying the applicant was employed with the company as a manager from February 1987 to February 1989.

On appeal, counsel for the applicant asserts that the applicant had no identification except for the Form I-94 issued by the Immigration and Naturalization Service, as his identification sank with his ship. Counsel also states that the applicant worked in unskilled farm labor jobs that required him to live on the properties. Thus, counsel asserts, the applicant had no lease to sign, and he was paid in cash. On appeal, counsel also submits two additional affidavits in support of the applicant's residence for the required time period:

- A September 8, 2006 affidavit from [REDACTED], a U.S. permanent residence since June 1, 2001, who declares he has continuously resided in the United States since August 1994 and that he met the applicant in September 1994 at the gas station in Woodland Hills, California.
- A September 8, 2005 affidavit signed by [REDACTED] who indicates that he is a citizen of the United States, wherein [REDACTED] declares that he has resided in the United States since January 1985 and first met the applicant in March 1985 when they were both farm workers on a farm in Delano, California.

The record also contains a copy of medical records dated July 29, 1979 and August 2, 1979 with regard to a patient with the applicant's name. However, these records indicate they relate to a 29 year-old individual whose birth date is August 30, 1949. The applicant's Form I-687 identifies a different birth date for the applicant – February 22, 1956; and the applicant would have been only 23 years old at the time that these medical records were made. The differences in birth date and age of the patient and the applicant indicate that the report actually does not relate to the applicant here. The director's decision explicitly noted the birth-date discrepancy. However, neither counsel nor the applicant directly addressed this issue on appeal. The submission of these medical documents reflects negatively on the credibility of the application.

The director's decision also explicitly noted the following discrepancy: the applicant provides a copy of an envelope addressed to an individual in India that bears a U.S. postage meter stamp of May 25, 1982 and lists the applicant's return address as being in Bakersfield, California, an address not listed in any of the affidavits or in the applicant's statements as the applicant's address. However, neither counsel nor the applicant directly addressed this issue on appeal. The questionable nature of this envelope also reflects negatively on the credibility of the application.

There is a conflict between the affidavit provided by [REDACTED] on appeal and that previously provided by [REDACTED]. Mr. [REDACTED] recalls that he first met the applicant in March 1985 when he and the applicant worked on a farm in Delano; however, [REDACTED] declares in his statement that the applicant worked in "our fields" in McFarland and Delano during July 1979 to February 1984. The applicant's statement that he began work at the Woodland Hills Car Wash, in Woodland Hills, California in March 1984 also conflicts with [REDACTED] statement. Another discrepancy in the record occurs when [REDACTED] indicates the applicant lived at a farmhouse located at [REDACTED] McFarland, California, between July 1979 and February 1984; but the applicant indicates on the Form I-687 that he moved in September 1983. These inconsistencies reduce whatever evidentiary weight the involved affidavits might otherwise have had, and they weigh against the credibility of the related assertions on the Form I-687.

The AAO finds that, though relevant, the affidavits and other statements provided by persons attesting to their company's employment of the applicant lack sufficient information to merit probative value. None of these documents comply with the criteria found at 8 C.F.R. § 245a.2(d)(3)(i), which requires that the employer include the applicant's address at the time of employment, periods of layoff, duties with the company, and whether the information was taken from official company records, and where the records are located and whether the Service may have access to the records.

The regulation at 8 C.F.R. § 245a.2(d)(6) directs that "the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility." Aside from the inconsistencies noted above, the witness statements produced by the applicant lack specific details about the witnesses' contacts and interactions with the applicant through the time period that is the subject of those statements. As such, they are relevant, but only as generalized and unsubstantiated declarations about the applicant's whereabouts. The AAO finds them lacking a body of concrete facts specific and extensive enough to substantiate the declarations as accurate and reliable. None of the affiants provide corroborating detail to substantiate the accuracy of the affidavits. The affidavits are not substantiated by details of the circumstances and events surrounding the affiants' and the applicant's relationship and interaction sufficient to establish the applicant's unlawful residence in the United States for the requisite time period. Therefore, the AAO judges the witness statements, alone and in combination, to have little credibility and probative value.

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. According to 8 C.F.R. § 245a.2(d)(6), the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility, and to meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony. The number of inconsistencies in the record, the questionable medical documents and mailing envelope, the lack of corroborating information in the witness affidavits, and the deficiencies in the employers' statements casts doubt on the validity of the applicant's claim to have to have continuously resided in the United States from before January 1, 1982 until May 4, 1988. Given the paucity of credible supporting documentation, the number of inconsistencies in the record, and the deficiencies in information provided in the affidavits about residence and about employment, it is concluded that the applicant has failed to meet his burden of proof and failed to establish continuous residence in an unlawful status in the United States 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. The appeal will be dismissed.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.