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U.S. Department of Homeland Security  
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**U.S. Citizenship  
and Immigration  
Services**

**PUBLIC COPY**



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FILE:



Office: LOS ANGELES

Date:

**AUG 29 2008**

MSC 06 102 12801

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 that reads "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 District Director, Los Angeles, California. 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 January 10, 2006. The applicant was interviewed by a Citizenship and Immigration Services (CIS) officer on October 17, 2006. On that same date, the CIS officer issued a request for further evidence (RFE) noting on the RFE that the applicant must submit his response by January 14, 2007. The applicant provided a partial response, received in CIS offices on November 20, 2006 and December 7, 2006. On December 14, 2006, the director denied the application, determining 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 provided information to the director within the time period prescribed on the RFE, but that the information was not considered. The information consists of one affidavit and a court disposition of criminal charges filed against the applicant. The AAO will consider this information on appeal.

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.* 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. *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.

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 for the requisite time period. The AAO considers only the evidence relevant to the pertinent time period.

On the Form I-687 filed on February 16, 2005 the applicant indicates that he last entered the United States on July 30, 1987 without a visa. The applicant lists his addresses for the pertinent time period as: [REDACTED] California from May 1981 to June 1987; and [REDACTED] California from July 1987 to October 1989. The applicant indicates that he left the United States in June 1987 to visit his parents in Mexico and returned to the United States in July 1987. The applicant lists his employment during the pertinent time period as Kramer Motors (Honda) in Santa Monica, California as a porter and detailer from September 1981 to July 1989.

At his October 17, 2006 interview, the applicant declares that he entered the United States on May 5, 1981; that he worked as a [REDACTED] waiting outside the Home Depot trying to get work, sometimes working only a few hours a day for small amounts of money.

As observed above, the director issued an RFE requesting that the applicant furnish further proof of his continuous present in the United States from 1981 to 1988, provide an I-693 medical report, and submit a certified court disposition for the applicant's 1989 arrest.

In the December 14, 2006 decision, the director acknowledged receipt of the court disposition regarding the applicant's 1989 arrest showing that all charges had been dismissed, but noted that the applicant had not submitted any evidence of his residence from 1981 to 1988.

On appeal, the applicant notes that he submitted an affidavit for the director's consideration prior to the due date of the requested response. The affidavit submitted is dated December 5, 2006 and is signed by [REDACTED] of Bell Gardens, California. [REDACTED] declares that he knows the applicant from 1981 to 2006 and that the applicant "was doing informal works for me as: [REDACTED] several times like landscaping, painting, cleaning and more labor activities from 1981 to 1987."

The record does not include further information in support of the applicant's residence from 1981 through the requisite time period.

The AAO has reviewed the applicant's sworn statement, the affidavit submitted, and the Form I-687. The applicant, on the Form I-687 indicates that he was employed as a porter/detailer from September 1981 to July 1989 for Kramer Motors in Santa Monica, California. This information conflicts with the applicant's sworn statement and the affidavit submitted, stating that the applicant worked as a [REDACTED] obtaining odd jobs when he could for a few hours a day. Doubt cast on any aspect of the applicant'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). 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. *See Matter of Ho*, 19 I&N Dec. at 591-92.

In addition, the affidavit submitted and reviewed on appeal, does not comply with the requirements set out at 8 C.F.R. § 245a.2(d)(3)(i) for letters from employers. Letters from employers should be on employer letterhead stationery and the affiant should declare that the information was taken from company records, identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable. In this matter, the affidavit does not provide the necessary supporting information to substantiate the fact for which it is presented, namely that the applicant was residing continuously and working in the United States during the requisite time period. Lacking relevant details and conflicting with the information in the applicant's Form I-687, this affidavit has minimal probative value.

The record reflects that the applicant was arrested by the Hawthorne Police Department on July 27, 1987 and was charged with violation of California Penal Code Sections 245(A)(2), misdemeanor assault with a firearm on person; Section 417(A)(2), misdemeanor exhibiting of a firearm; and Section 240, misdemeanor assault. The applicant was convicted of misdemeanor exhibiting of a firearm, and was sentenced to 3 days in jail and 24 months probation. On April 3, 2007, the conviction was set aside, a plea of not guilty was entered, and the charge was dismissed. Any rehabilitative action that overturns a state conviction is ineffective to expunge a conviction for immigration purposes. *Matter of Roldan*, 22 I&N Dec. at 523, 528. Therefore, the applicant remains "convicted" of the misdemeanor offense cited above for immigration purposes.

The deficient affidavit and inconsistent information in the record constitute the only evidence of the applicant's residence in the United States from prior to January 1, 1982 through the requisite time period. The affidavit lacks credibility and probative value for the reasons noted. The absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts 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 lack of information in the affidavits and the lack of any other credible supporting documentation, it is concluded that the applicant 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. The appeal will be dismissed.

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