

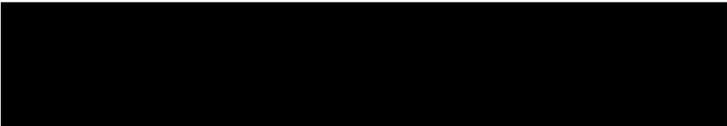
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**U.S. Citizenship  
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FILE: [REDACTED]  
MSC-05-140-10243

Office: NEW YORK Date: FEB 20 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:



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, 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 failed to submit additional evidence in response to the Notice of Intent to Deny (NOID). The director denied the application for the reasons expressed in the NOID. Specifically, the director found 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.

On appeal, counsel for the applicant stated that the applicant had established that he meets the requirements for temporary resident status. Counsel also stated that the applicant was a minor in the 1980s and was not old enough to obtain documentation that could have been submitted in support of his application. In addition, counsel indicated that the applicant's relatives would not have wanted to keep a record of the applicant's residence during the requisite period because the applicant was in the United States unlawfully. Counsel explained that secondary evidence should be considered in the absence of primary evidence, that the applicant's testimony was consistent, and that the applicant's testimony with some other evidence can be sufficient to meet the applicant's 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)(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)(1) 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 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 February 17, 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 listed the following addresses during the requisite period: [REDACTED] Bronx, New York from July 1981 to November 1987; and [REDACTED] Bronx, New York from November 1987 to July 1994. At part #33 where applicants were asked to list all employment in the United States since entry, the applicant listed only the following position during the requisite period: Car washer with Tremont Car Wash, from February 1987 to July 1994. It is noted that the record includes a correction to Form I-687 submitted by the applicant

on November 5, 2005. In this correction, the applicant stated that he never worked for Tremont Car Wash, and that he could not have worked from February 1987 to July 1994 because he was very young at this time. It is noted that the applicant indicated on his Form I-687 that he was born on July 24, 1979. Therefore, the employment listed on Form I-687 would have occurred from age seven to age 15. The applicant explained that the error resulted from a misunderstanding on the part of the individual who helped him prepare the form. It is noted that, at part #44 of Form I-687 where applicants were asked to include the signature of the individual other than the applicant who is preparing the form, no information has been entered. It is also noted that, at part #43, the applicant has certified with his signature that the information on his Form I-687 is true and correct. The fact that the applicant failed to make the correction prior to signing his Form I-687, together with the fact that no preparer was listed on the form, casts some doubt on the applicant's explanation for his initial indication that he was employed from approximately age seven to age 15.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted three attestations. The applicant submitted an affidavit from [REDACTED] which states that the affiant has known the applicant in the United States since 1987. This affidavit fails to provide details regarding how the affiant met the applicant, his frequency of contact with the applicant during the requisite period, and the applicant's addresses during the requisite period. As a result, this affidavit is found to lack sufficient detail to confirm that the applicant resided in the United States throughout the requisite period.

The applicant provided an affidavit from his mother, [REDACTED] in which the affiant stated that she traveled to the United States with the applicant in July 1981 and remained until May 1990. It is noted that the affiant's signature appears to have been notarized by herself. This casts some doubt on the authenticity of the affiant's signature. In addition, the affiant failed to provide detail regarding the applicant's residences during the requisite period, whether he attended school, and who cared for him during the requisite period. Considering that the affiant is the applicant's mother and she indicated that she remained in the United States with the applicant throughout the requisite period, this affidavit is found to lack sufficient detail to confirm that the applicant resided in the United States throughout the requisite period.

The applicant also provided an affidavit from [REDACTED] in which the affiant stated that he has known the applicant since 1981 when the applicant's mother brought him to New York. The affiant stated that he helped baby sit the applicant from 1981 to 1994. This affidavit fails to provide detail regarding how the affiant met the applicant, how the affiant came to baby sit for the applicant, and the applicant's addresses during the requisite period. As a result, this affidavit is found to lack sufficient detail to confirm that the applicant resided in the United States throughout the requisite period.

In denying the application, the director found 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.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the requisite period, and has submitted attestations from only three people concerning that period. Each of the affidavits lacks sufficient detail to confirm that the applicant resided in the United States throughout the requisite period.

The absence of sufficiently detailed supporting 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 inadequacy of the applicant's explanation of having erroneously indicated that he was employed in the United States as a child, and given his 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.