

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

L1

PUBLIC COPY

[Redacted]

FILE: [Redacted]
MSC 04-267-10121

Office: NEW YORK

Date: FEB 22 2008

IN RE: Applicant [Redacted]

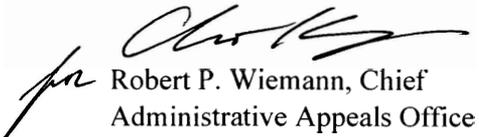
APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a.

ON BEHALF OF APPLICANT:

[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter 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 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, counsel states that the two affiants noted by the director in his decision were never contacted by Citizen and Immigration Services (CIS), and that the applicant presented a permanent resident card showing that another affiant was in the United States before 1981.

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. *See* CSS Settlement Agreement paragraph 11 at page 6 and 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.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided voluminous documentation, mostly in the form of copies of tax returns. However, none of the evidence relates to the requisite period, and therefore is insufficient to substantiate the applicant’s claim of residence in the United States. The applicant submitted a copy of a receipt from Hotel Bryant that is too sparse to corroborate the applicant’s claim of residency throughout the requisite period. He also submitted copies of envelopes addressed to him in the United States where the postmarks were illegible, subsequent to January 1, 1982, or beyond the requisite period.

The applicant also submitted the following attestations:

- An affidavit from [REDACTED] of [REDACTED], in which he stated that the company employed the applicant as a gas attendant from January 12, 1981 to August 30, 1984.
- An affidavit from [REDACTED], the owner of [REDACTED], in which he stated that the store employed the applicant as a salesman from October 1, 1984 to November 3, 1988.
- An affidavit from [REDACTED], owner of [REDACTED], in which he stated that the company employed the applicant from December 1, 1988 to November of 1989.

The affidavits do not conform to the regulatory standards for attestations by employers at 8 C.F.R. § 245a.2(d)(3)(i). Specifically, the declarants do not specify the address(es) where the applicant

resided throughout the claimed employment periods, nor do they indicate whether the employment information was taken from company records. Neither has the availability of the company records for inspection been clarified. In addition, the record does not contain pay stubs, W-2 Forms, certification of filing federal or state income tax returns, or other employment records that pertain to the requisite period, to corroborate the assertions made by the declarants. *See* 8 C.F.R. § 245a.2(d)(3)(i).

The applicant submitted an affidavit from [REDACTED] in which he stated that he has known the applicant since February of 1981, and that he first met the applicant at the St. Benedict the Moore Church where he would teach the applicant to write and speak English. He also stated that the applicant would visit the church on different occasions. This statement is inconsistent with the applicant's statement on Form I-687, at part #31, where he was asked to list all affiliations or associations with churches, organizations or clubs in the United States since his entry into the country, and he indicated "NONE." Because this affidavit contains testimony that conflicts with what the applicant showed on his Form I-687 application, doubt is cast on assertions made in the affidavit. Because this affidavit conflicts with information on the Form I-687 and is lacking in detail and probative value, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

The applicant submitted affidavits from [REDACTED] who claim to have lived with the applicant at various periods between 1984 and 1989. While the claims made may present some evidence of the applicant's presence in the United States between 1984 and 1989, they do not establish that the applicant resided in the United States throughout the requisite period.

The applicant also submitted the following attestations:

- An affidavit from [REDACTED] in which she stated that she has known the applicant since September of 1983. Here, the affiant has failed to specify the frequency with which she saw the applicant during the requisite period. The affiant has not provided evidence that she herself was present in the United States during the requisite period. Although the affiant attested to the applicant's residence in this country since 1983, she has failed to provide any relevant and verifiable testimony to corroborate the applicant's claim of residence in the United States since prior to January 1, 1982. Because this affidavit is significantly lacking in detail it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.
- An affidavit from [REDACTED] in which he stated that he has known the applicant since 1981 that the applicant resided at [REDACTED] Brooklyn, New York, and that they worked together at a gas station. Here, the affiant fails to specify when in 1981 he met the applicant. In addition, there is no evidence in the record to demonstrate that the affiant himself was present in the United States during the requisite period. Therefore, the affidavit can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

- An affidavit from [REDACTED] in which he stated that he has known the applicant since March of 1981, that the applicant was working at Kaplan Gas Station, and that he resided at [REDACTED], Brooklyn, New York. Here the affiant fails to indicate how he met the applicant or the frequency in which they communicated with one another. He also fails to specify the dates of the applicant's employment and residence in the United States. In addition, there is no evidence in the record to demonstrate that the affiant himself was present in the United States during the requisite period. Therefore, the affidavit can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

An affidavit from [REDACTED] in which he stated that he met the applicant through mutual friends in 1981 and that they subsequently became good friends and kept in constant touch with one another by telephone and through social visits. He also listed the applicant's addresses and places of employment. Here, the affiant fails to identify the mutual friends' names. He has failed to specify the frequency with which he saw the applicant during the requisite period. The affiant has not provided evidence that he himself was present in the United States during the requisite period. There is no evidence in the record to demonstrate that the information provided by the affiant is based upon first hand knowledge. Although the affiant attested to the applicant's residence in this country since 1981, he has failed to provide any relevant and verifiable testimony to corroborate the applicant's claim of residence in the United States from prior to January 1, 1982. Because this affidavit is lacking in detail, 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 affidavit from [REDACTED] was not credible because CIS records did not show that she was in the United States before September 6, 1986. The director further noted that the affidavit from [REDACTED] was not credible because CIS records did not show that he was in the United States before December 8, 1981. The director also noted that as of the date of the decision, neither [REDACTED] nor [REDACTED] was reachable by the telephone numbers they provided.

On appeal, counsel states that neither [REDACTED] nor [REDACTED] were ever contacted by CIS, and that the applicant presented a copy of [REDACTED] permanent resident card showing that he was in the United States before 1981. The applicant submitted as evidence a copy of [REDACTED] resident alien card, and affidavits from [REDACTED] and [REDACTED].

Although the applicant presented a copy of [REDACTED] permanent resident card, and the affidavits of [REDACTED] and [REDACTED] this information is insufficient to establish the applicant's continuous unlawful residence in the United States throughout the requisite period. Neither is this information submitted on appeal sufficient to overcome the numerous discrepancies and inconsistencies noted by the director and in the foregoing discussion.

As is stated above, 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). The applicant has been given the opportunity to satisfy his burden of proof with a broad range of evidence pursuant to 8 C.F.R. § 245a.2(d)(3). However, the applicant has not provided sufficient contemporaneous evidence of residence in the United States relating to before January 1, 1982, through the time of filing. Further, he has submitted attestations from people, the totality of which were not sufficient to prove, by a preponderance of the evidence, his claimed residence 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 affidavits 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.