

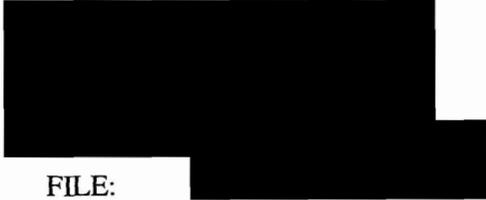
Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

L1



FILE: [REDACTED]  
MSC-06-073-11577

Office: NEW YORK Date: FEB 22 2008

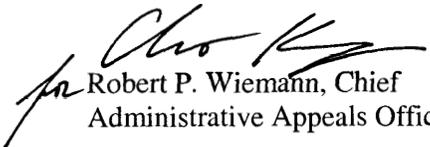
IN RE: Applicant: [REDACTED]

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: SELF-REPRESENTED

**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, on December 12, 2005. 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, the applicant states that the two affiants, [REDACTED] and [REDACTED], both have resided in the United States since prior to January 1, 1982, and are now permanent residents. He further states that the affiants do not have any documentation to demonstrate their presence in the country from 1981 to 1982, due to the passage of time.

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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to meet his burden of proof 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 as evidence copies of two postmarked envelopes bearing the applicant's name. The two envelopes were dated December 27, 1981 and September 8, 1983, respectively.

The applicant also submitted the following attestations:

- An affidavit dated October 24, 2005, from [REDACTED] in which he stated that he is a citizen of the United States and that he has known the applicant since October of 1981. The affiant submitted a copy of his United States passport issued to him December 20, 2004. The affiant further stated that he met the applicant at the Bony Street Temple in New York where they gathered for a Sunday ceremony, and that since then, they have met at other Indian gatherings. Here, the affiant's statements are inconsistent with the applicant's statement on his Form I-687, at part #33 where he failed to list any associations or affiliations with any churches, social clubs, or organizations. This inconsistency calls into question the affiant's ability to confirm that the applicant resided in the United States during the requisite period. Because this affidavit contains testimony that conflicts with what the applicant showed on his Form I-687, doubt is cast on assertions made in the affidavit. 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. 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, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The affiant lists three addresses in New York where the applicant allegedly resided from 1981 to 1989. However, there is nothing in the record to demonstrate that this information is based upon the affiant's firsthand knowledge, rather than knowledge that is based primarily on what the applicant told him about his addresses in the United States. This affidavit is significantly lacking in detail, and it conflicts with other evidence in the record. Therefore, only minimal weight can be afforded to it in establishing that the applicant resided in the United States during the requisite period.

- An affidavit dated January 30, 2006 from [REDACTED] in which she stated that she is a citizen of the United States and that she has known the applicant since July of 1981, when the applicant came to visit her at her home in Seattle, Washington. The affiant submitted a copy of her United States passport issued to her on December 29, 2004. Here, the affiant does not indicate that she saw the applicant in the United States after the single visit in July of 1981, or that they kept in contact with one another during the requisite period. There is nothing in the affiant's statement to demonstrate the frequency with which she and the applicant communicated with each other. The affiant lists three addresses where the applicant allegedly resided from 1981 to 1989. However, there is nothing in the record to demonstrate that this information is based upon her firsthand knowledge rather than knowledge that is based primarily on what the applicant told her about his addresses in the United States. Because this attestation 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.

In denying the application the director noted that Citizenship and Immigration Services (CIS) records showed that neither the affiant [REDACTED] or [REDACTED] were in the United States during the statutory period. The director further noted that the record of proceedings did not contain the original envelopes postmarked from India. The director determined that the evidence submitted by the applicant fell short of statutory and regulatory criteria for the immigration benefits sought.

On appeal, the applicant states that the affiants have resided in the country since before January 1, 1982, that they do not have any documentation to demonstrate their presence in the country due to the passage of time, and requests that the AAO review the affiant's files for accuracy. Contrary to the applicant's statements, statutorily he has the burden of proving by a preponderance of the evidence that he 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. Section 291 of the Act, 8 U.S.C. § 1361; Section 245A(a) of the Act, 8 U.S.C. § 1255a (a).

The applicant submits as evidence on appeal the two original envelopes noted above. The applicant also resubmits copies of the attestations noted above. The postmarked envelopes are insufficient to establish the applicant's claimed residence in the United States throughout the requisite period.

The affidavits submitted conflict with information contained in the applicant's Form I-687 application and are lacking in detail and therefore, cannot be afforded sufficient weight to substantiate the applicant's claim of continuous unlawful residence in the United States during the requisite period. Section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2). The record lacks any document that might lend credibility to the applicant's claim of residence in the United States for the required time period.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period 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 paucity of credible supporting documentation and the applicant's reliance upon affidavits containing conflicting information and minimal probative value, it is concluded that he has failed to meet his burden of proof and failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application, 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.