

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

LI

[REDACTED]

FILE: [REDACTED]
MSC 06 097 14274

Office: SAN FRANCISCO Date:

JAN 09 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

IN 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 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.

A handwritten signature in black ink, appearing to read "R. 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, San Francisco, 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 5, 2006 (I-687 Application). 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. Specifically, the director found that the applicant had not provided sufficient evidence and had provided contradictory testimony. 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, through counsel, claims that, “notwithstanding the reasoning of the decision herein,” the applicant has provided sufficient evidence, and documentary and oral testimony, to substantiate his claim of continuous residence and continuous physical presence in the United States for the requisite period.

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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.2(d)(6).

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.

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 (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 demonstrate that he entered before 1982 and resided in the United States for the requisite period. In this case, the applicant has provided the following evidence relating to the requisite period:

- Four affidavits from acquaintances, all dated in October 2006 and submitted in response to the director's Notice of Intent to Deny issued on September 12, 2006. The affidavits are written on duplicate fill-in-the-blank forms in which each affiant states that he "has personally known and has been acquainted with [the applicant]" and that he personally knows that the applicant has resided in the United States in "Los Angeles CA from 1981 to 1994, Bay Point CA from 1994 to 2001, and Pittsburg CA from 2001 to 2006." Each affiant also attests to the applicant's good moral character. The places and dates of residence listed for the applicant are consistent with information provided by the applicant on his I-687 Application. However, the affidavits are forms and lack details regarding the affiants' claimed 25-year relationship with the applicant. The affiants fail to indicate any personal knowledge of the applicant's entry to the United States or of the circumstances of his residence other than the cities where he resided. There is no evidence that the affiants resided in the United States during the requisite period and no details of any relationship that would lend credibility to their statements.

- An affidavit dated July 6, 2006, from [REDACTED] of Bay Point, California. [REDACTED] states that he has known the applicant since 1981 when [REDACTED] was living in Los Angeles and visited his best friend, [REDACTED], with whom the applicant was living at that time. The statement is consistent with information provided by the applicant on his I-687 Application and at his interview, that his father's name is [REDACTED] and that the applicant lived with his father and his father's friends in Los Angeles from 1981 to 1987. As with the affidavits noted above, however, the affidavit lacks any details of a claimed 25-year relationship. The affiant does not indicate any personal knowledge of the applicant's entry to the United States or of the circumstances of his residence other than that he resided with [REDACTED] in Los Angeles. He fails to note that [REDACTED] is the applicant's father or that the applicant was a child when they first met or how or why the affiant maintained contact with the applicant. There is no evidence that the affiant resided in the United States during the requisite period and no details of any relationship that would lend credibility to the affidavit.
- An affidavit dated July 19, 2001, from the applicant's mother, [REDACTED]. She states that "we" reside at [REDACTED], Bay Point, California, and that the applicant "came to the United States the year 1981 at the age of nine years and has resided in the United States ever since. The father has [passed] on." There is no evidence that the affiant resided in the United States for the requisite period. The affiant provides no details regarding the circumstances of her son's entry into or residence in the United States, no explanation of where he resided, with whom, or how he survived as a child, and whether he attended school.
- Several envelopes addressed to the applicant at [REDACTED] in Los Angeles, one with a 1983 postmark from [REDACTED]; another with a 1986 postmark from [REDACTED] in Mexico, and others that are not relevant to the requisite period. These envelopes, apparently from his parents, detract from the credibility of the applicant's statements regarding his places of residence during the requisite period. The applicant claimed at his interview that he did not reside at the Newtonia address until 1987; and he claimed on a Form I-687 dated April 3, 1990, that he resided at [REDACTED], Los Angeles, from 1981 to 1987. The addresses on the envelopes and the dates and addresses of residence provided by the applicant are contradictory, and the envelopes can be afforded minimal probative value as a result.
- An affidavit dated April 2, 1990 from [REDACTED]. The affiant states that he is the custodian at [REDACTED] Los Angeles, and that he has personal knowledge that the applicant has resided in Los Angeles from 1981 to 1990 because "[they] were personal friends in Mexico and when [the applicant] arrived from Mexico he came to stay with [him]." As noted above, the applicant claimed to have resided at the Newtonia address beginning in 1987, or to have lived at the Sentinel address for the relevant period. This affidavit also fails to mention the applicant's father, although according to the applicant and [REDACTED], the affiant noted above, the applicant resided with his father when he arrived in the United States. In addition to these inconsistencies, the affiant fails to provide any details regarding his claimed friendship with the applicant, who was a child in 1981, and fails to provide any evidence that the affiant was in the United States for the requisite period.

For the reasons noted above, the documents submitted in support of the applicant's claim can be afforded minimal weight as evidence of the applicant's residence and presence in the United States for the requisite period. All of the affidavits are bereft of sufficient detail to be found credible or probative; not one affiant indicates personal knowledge of the applicant's entry to the United States or how he lived and survived as a child in Los Angeles; the affiants provide inconsistent and contradictory information regarding the applicant's claimed dates and places of residence.

The remaining evidence in the record is comprised of the I-687 Application and the applicant's statements, in which he claims to have entered the United States in February 1981, when he was nine years old, and resided in the United States for the requisite period with his father and his father's friends. As noted above, to meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony. In this case, his assertions are not supported by any credible evidence in the record. Moreover, the places and dates of residence he provided at his interview and on a prior Form I-687 are inconsistent and are actually contradicted by affidavits he has submitted.

The applicant has provided contradictory information regarding where he resided during the requisite period; although he claims to have resided in the United States since he was nine years old, he provided neither school records nor medical records nor an explanation of why they were unavailable. He also failed to provide any evidence from or about any responsible adult to indicate the circumstances of his travel to Los Angeles as a child or how he survived in Los Angeles during his childhood and throughout the requisite period.

The absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the 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 credible supporting documentation and the inconsistencies noted in the record, 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.

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