

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

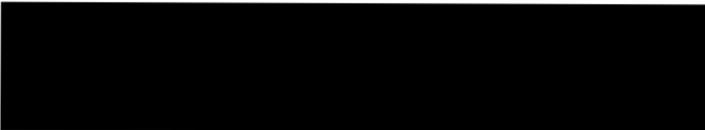
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

21



FILE: [REDACTED]
MSC 05 236 14491

Office: SAN DIEGO

Date: JAN 18 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.

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 Diego, and 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. Specifically, the director determined that the applicant failed to respond to the previously issued request for additional evidence (RFE). The director denied the application, finding that the applicant had not met his burden of proof and was, therefore, ineligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, the applicant asserts that he did respond to the director's RFE and provides evidence in support of that claim. As such, the director's finding is hereby withdrawn and the applicant's submissions will be addressed in the decision below.

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 Immigration and Nationality Act (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).

For purposes of establishing residence and presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the alien attempted to file a completed Form I-687 application and fee or was caused not to timely file, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. 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.* 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 resided in the United States during the requisite time period. Pursuant to a thorough review of the documentation submitted, the AAO concludes that the applicant has not met his burden of proof. The record shows that the applicant did not initially submit evidence in support of the application. However, the applicant submitted an additional Form I-687, prior to the issuance of an RFE, claiming that the individual who assisted him in completing the application failed to provide all of the necessary information. Additionally, in response to the RFE, the applicant provided numerous affidavits from various affiants, all of whom claimed to have known of the applicant's residence in the United States since 1981. All twelve affidavits were signed by the respective affiants on August 26, 2006 and all affiants claimed that the applicant has resided in the United States since 1981. One of the affiants, [REDACTED], claimed that she became acquainted with the applicant in 1968, the year the applicant was born. However, this claim is questionable as she claimed that she came to know the applicant when he and his family rented a room in her house, an event that commenced in 1981. The affiant claimed that the applicant and his family continued to reside at her house until 1988 and stated that the applicant continued to keep in touch with her and visited her "a lot." However, the applicant indicated on his second Form I-687 application that he left the United States in 1988 and remained outside the United States until December 1996, more than eight years after he stopped living at the affiant's home. Given the anomalies in [REDACTED]'s affidavit, her statements can be afforded minimal weight as evidence of the applicant's residence and presence in the United States for the requisite period.

In the affidavits signed by [REDACTED] the applicant's uncle, and [REDACTED] the applicant's aunt, both affiants claimed that the applicant resided with them in April 1981 and on various other occasions. [REDACTED] stated that the applicant resided with him in 1982 and from 1983 to 1988. Neither statement is consistent with that of [REDACTED] or with the information provided by the applicant in No. 30 of the second Form I-687, which does not include the couple's residence among the list of the applicant's prior residential addresses. Due to this significant inconsistency, both affiants' statements can

be afforded only minimal weight as evidence of the applicant's residence and presence in the United States for the requisite period.

While [REDACTED] and [REDACTED], also the applicant's uncle and aunt, claimed that they knew of the applicant's residence at the home of [REDACTED] and [REDACTED] neither discussed the applicant's purported residence at the home of [REDACTED] which the applicant listed in No. 30 of the Form I-687 as one of his residences. The remaining affiants include [REDACTED]

[REDACTED], and [REDACTED]. While these individuals all claimed to have known the applicant since 1981, none provided any verifiable information discussing facts and circumstances of the applicant's life in the United States during the requisite time period.

Lastly, in light of the applicant's age at the time he purportedly entered the United States to commence his residence, it is unclear why the applicant has provided no contemporaneous evidence in the form of school records to support his claim. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In summary, the applicant's failure to provide any contemporaneous evidence coupled with his submission of inadequate, and often inconsistent, third party attestations in support of his claimed residence in the United States during the relevant time period significantly undermine the validity of the applicant's claim. 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 will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). 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 documents with minimal probative value, it is concluded that he has 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*, 20 I&N Dec. 77. 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.