

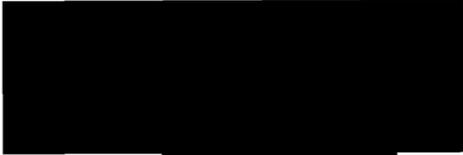


U.S. Citizenship  
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FILE: [REDACTED]  
MSC 05 271 13626

Office: LOS ANGELES

Date: JUL 29 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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

*for*  
*Michael T. Kelly*  
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, Los Angeles. 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, the applicant asserts that he has established his unlawful residence for the requisite time period, that he is qualified under Section 245A of the Act and the CSS/NEWMAN settlement agreements, and that his application for temporary resident status should be granted.

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 245(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 demonstrate that he resided in the United States for the duration of the requisite period. Here, the applicant submitted the following documentary evidence:

#### Employment Letter

The applicant submitted a March 2, 1992 letter from [REDACTED] president of [REDACTED] [REDACTED] [REDACTED] stated that from April of 1984 to March of 1989, the applicant was permanently employed by [REDACTED] and held the position of “counter-stacker.” Mr. [REDACTED] failed to provide the applicant’s address at the time of employment, show periods of layoff, declare whether the information was taken from company records, and identify the location of such company records and state whether such records are accessible, or in the alternative state the reason why such records are unavailable as required under 8 C.F.R. § 245a.2(d)(3)(i). The employment letter/affidavit submitted by the applicant is of little probative value as it does not comply with the above-cited regulations, and shall, therefore, be afforded little weight.

#### Affidavits

- [REDACTED]

[REDACTED] submitted a sworn statement indicating that he had personal knowledge that the applicant resided in Las Angeles, CA from 1981 – 1984. The affiant states that he is the applicant’s father, and that he resided with the applicant during that time frame.

- [REDACTED]

[REDACTED] states that he has personal knowledge of the applicant's presence in the United States from 1985 – 1989, and that he lived with the applicant in Los Angeles during that time frame. The affiant provided the applicant's address during the time period stated in the affidavit.

- [REDACTED]

[REDACTED] provided two sworn statements.

The first is dated March 16, 1992, and indicates that the affiant is a housekeeper residing at [REDACTED] states that she has personal knowledge that the applicant lived in the United States from September of 1989 until March 16, 1992 (the date of the affidavit) because the affiant was the manager where the applicant was renting [REDACTED]

The second affidavit is dated April 22, 1992, wherein the affiant states that she has known the applicant since 1981, and that she gave him a ride to Mexico on September 2, 1987 due to a family emergency. The affiant further states that she again saw the applicant in Los Angeles, CA ten days from the date she provided the applicant transportation to Mexico.

Although the applicant has submitted affidavits in support of his application, the applicant has not provided any contemporaneous evidence of residence in the United States for the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. Although not required, none of the affidavits included any supporting documentation of the affiant's presence in the United States during the requisite period. None of the affiants provided detailed evidence establishing how they knew the applicant, the details of their association or relationship, or detailed accounts of their ongoing association establishing a relationship under which the applicant could be reasonably expected to have personal knowledge of the applicant's residence, activities and whereabouts during the requisite period covered by the applicant's Form I-687. To be considered probative and credible, affidavits and related proof must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. The proof must be presented in sufficient detail to establish that a relationship does in fact exist, how the relationship was established and sustained, and that the affiant does, by virtue of that relationship, have knowledge of facts alleged. 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 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 applicant's reliance upon documents with minimal probative value, it is concluded that the affidavits submitted fail to establish continuous residence in an unlawful status in the United States for the requisite period.

School Records

- The applicant provided an uncertified copy of junior high school records which indicate that Viliulfo Velez attended school in California for the fall semester of 1982 and the spring semester of 1983.

Tax Records

- The applicant provided uncertified copies of tax returns for the years 1989 and 1991. The applicant provided copies of his W-2 forms for the years 1990 and 1991.

The school and tax records listed above do not establish the applicant's presence in the United States for the requisite time period. At face value, the school and tax records would establish only that the applicant was in the United States during the 1982 – 83 school year, and in some portion of 1989, 1990 and 1991. Taken as a whole, the evidence submitted lacks sufficient detail to establish the applicant's presence in this country for the requisite time 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 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 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 for the requisite period.

Further, the applicant stated to a United States immigration officer, during the applicant's legalization interview on July 25, 2006, that he left the United States in February of 1987 to visit his family, and returned September of 1987 (an absence of approximately seven months). The regulation at 8 C.F.R. § 245a.2(6)(h)(i) states as follows:

(h) *Continuous residence.* (1) For the purpose of this Act, an applicant for *temporary resident status* shall be regarded as having resided continuously in the United States if, at the time of filing of the application:

- (i) No single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982 through the date the application for temporary resident status is filed, unless the alien can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed;

....

In view of the above regulation, the applicant has also failed to establish continuous residence during the requisite period because his 1987 absence from the United States exceeded, according to his own

testimony during his legalization interview, 45 days. The record does not establish that the applicant's return to the United States within the time permitted for "continuous residence" absences could not be accomplished due to emergent reasons. Although the term "emergent reasons" is not defined by regulation, *Matter of C-*, 19 I. & N. Dec. 808 (Comm. 1988), holds that emergent means "coming unexpectedly into being." The applicant states that he left the United States to visit his family. The applicant has provided no evidence of "emergent reasons" causing his prolonged absence from the United States. The record does not establish that the absence was caused by an event which came "unexpectedly into being." For this additional reason, the application may not be approved.

Finally, the applicant states, on appeal, that he has continuously resided in the United States since September 4, 1981, with the exception of a single absence (one month) in September of 1987. The applicant denies that he was out of the country for the approximate seven month period noted above. This information directly contradicts the applicant's statements concerning the referenced seven-month absence made during his legalization interview on July 25, 2006. The applicant offers no explanation for that contradiction. The evidence provided by the applicant, therefore, is not deemed credible and shall be afforded little weight. 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. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Therefore, based upon the foregoing, 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.