

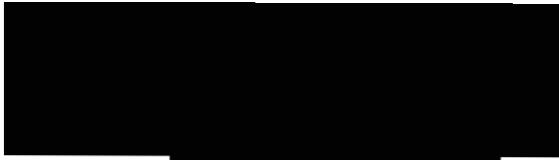


U.S. Citizenship  
and Immigration  
Services

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invasion of personal privacy**

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FILE: MSC-06-047-13921

Office: ATLANTA

Date: JUN 23 2008

IN RE: Applicant:



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, Atlanta. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because she found the evidence submitted with the application was insufficient to establish eligibility for Temporary Resident Status pursuant to the terms of the CSS/Newman settlement agreements. Specifically, the director found that the applicant failed to provide sufficient evidence that he resided in the United States throughout the requisite period. The director also found that the applicant had testified under oath before an immigration officer that he never filed for legalization prior to his current I-687 application.

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) 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; 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).

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 applicant 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.

Under the CSS/Newman Settlement Agreements, if the director finds that an applicant is ineligible for class membership, the director must first issue a notice of intent to deny, which explains any perceived deficiency in the applicant’s class member application, and provide the applicant 30 days to submit additional written evidence or information to remedy the perceived deficiency. CSS Settlement Agreement paragraph 7 at page 4; Newman Settlement Agreement paragraph 7 at page 7. Once the applicant has had an opportunity to respond to any such notice, if the applicant has not overcome the director’s finding, then the director must issue a written decision to deny an application for class membership to both counsel and the applicant, with a copy to class counsel. CSS Settlement Agreement paragraph 8 at page 5; Newman Settlement Agreement paragraph 8 at page 7. The notice shall explain the reason for the denial of the application, and notify the applicant of his or her right to seek review of such denial by a special master. *Id.*

As noted above, the director found that the applicant testified that he never filed for legalization prior to his current I-687 application. However, the director adjudicated the Form I-687 application on the merits. As a result, the director is found not to have denied the application for class membership.

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 has not met his burden of proof.

The applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on November 16, 2005. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant showed his first address in the United States to be in Atlanta, Georgia in May of 1999. Similarly, at part #33, he listed his first employment in the United States to as beginning in May of 1999.

The applicant submitted the following documents in support of his claim of residence in the United States during the requisite period:

- Letter from [REDACTED], Senior Pastor of Center of Hope Ministries, signed and dated December 30, 2005. The letter states that the applicant was in the United States in 1981 and that the author of the letter met the applicant while he was helping at a community based organization. The letter is not notarized, and provides no details of the author's relationship with the applicant that would lend credibility to the letter. In addition, the letter fails to comply with the requirements of 8 C.F.R. § 245a.2 in that it does not show the applicant's dates of membership and does not state the address where the applicant resided during the membership period. This letter therefore has minimal weight as evidence of the applicant's residence in the United States during the requisite period.
- Affidavit of [REDACTED] signed and notarized on September 29, 2006. The affiant states that he met the applicant in October 1986 while attending a cultural week in California. The affidavit lacks details regarding how the affiant met the applicant, the nature of their relationship, an address or how frequently he had contact with the applicant. The affidavit therefore has minimal weight as evidence of the applicant's residence in the United States during the requisite period.

Affidavit of [REDACTED] signed and notarized on September 27, 2006. The affiant states that he met the applicant in 1981 during a cultural event in Decatur, GA. The affiant does not provide any details of this event, of how he met the applicant, or of the nature and frequency of their contact since that time. The affidavit therefore has minimal weight as evidence of the applicant's residence in the United States during the requisite period.

Affidavit from [REDACTED] signed and notarized September 27, 2006. The affiant states that he met the applicant on November 2, 1986 at the second annual convention of Nibo Union USA in Atlanta, GA. The affiant does not provide any details regarding his relationship with the applicant such as the nature and frequency of their contact, nor does he state that he had knowledge of the applicant's residence during the requisite period. The affidavit therefore has minimal weight as evidence of the applicant's residence in the United States during the requisite period.

- Affidavit from [REDACTED] signed and notarized October 3, 2006. The affiant states that she met the applicant at First Mt. Selah Baptist Church on December 31, 1981 and that the applicant lived with her from September 1982 until some time in 1986. The applicant did not list his address for this time period on the I-687 application and has not explained his failure to do so. The affiant does not indicate under what circumstances she met the applicant in 1981, how she dates her acquaintance with the applicant, or the nature and frequency of her contact with the applicant outside the time that they lived together. The affidavit therefore has minimal weight as evidence of the applicant's residence in the United States during the requisite period.

The applicant has not provided sufficient evidence in support of his claim of residence in the United States relating to the entire requisite period. The absence of sufficiently detailed supporting 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 lack of credible supporting documentation, 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.