



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**  
**identifying data deleted to**  
**prevent clearly unwarranted**  
**invasion of personal privacy**

41

[REDACTED]

FILE: [REDACTED]  
MSC-05-231-10704

Office: Charleston

Date: MAR 03 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, Charleston. 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 meets all of the criteria and conditions of eligibility under the provisions of the law.

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 demonstrate that she resided in the United States for the duration of the requisite period. Here, the submitted evidence is not relevant, probative, or credible.

The record shows that the applicant submitted a Form I-687 Application and Supplement to Citizenship and Immigration Services (CIS) on May 19, 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 listed his first address in the United States as Fort Pierce, Florida, from June 1981 to March 1988. At part #33, he listed his first employment in the United States as working for [REDACTED] in Fort Pierce, Florida from July 1981 to February 1988. According to the Form I-687 at part #3, the applicant's date of birth is January 30, 1974. Therefore, according to the information supplied by the applicant, the applicant began working for [REDACTED] at the age of seven.

The applicant submitted the following documentation: (1) a copy of a retail cigar and cigarette license for Go Mart issued on June 15, 2001; (2) a copy of the applicant's group accidental death plan with an effective date of October 15, 2001; (3) a copy of the applicant's pay stubs for the pay periods ending on April 12, 2001 and April 26, 2001; (4) a copy of the applicant's marriage certificate listing [REDACTED] as his wife and stating that the date of marriage was May 20, 1996 in India; (5) a copy of the applicant's birth certificate; (6) a copy of the applicant's social security statement dated October 13, 2004 and listing social security earnings

for the years 2001, 2002, and 2003; (6) a copy of the applicant's Internal Revenue Service Form 1040 for 2004; (7) a copy of the applicant's employment authorization card valid from August 9, 2005 to August 8, 2006; (8) a copy of the applicant's Georgia driver's license with an exam date of October 28, 2004; and (9) a copy of the applicant's Indian passport.

The record of proceeding includes a notarized form-letter affidavit for [REDACTED] owner of [REDACTED] dated February 10, 2006. [REDACTED] sells "used appliances such as: stoves; refrigerators; air conditioners; washing machines and ice [sic], etc." Under penalty of perjury, [REDACTED] states that [REDACTED] and his family were customers of his on and off from 1981 to 1988. [REDACTED] also states that "this information is based on my personal recollection and no other records are available." According to the applicant's birth certificate, [REDACTED] is the applicant's father. Although the affidavit mentions the applicant's father "and his family," it does not identify the applicant by name. The declarant does not indicate if he met the applicant in 1981 or at any time, he does not provide an address where the applicant resided in the United States, or how frequently he had contact with the applicant. Given these deficiencies, this statement has minimal probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.

The record of proceeding also includes a letter from [REDACTED] dated December 11, 2003 and written on Walthall Oil Company letterhead. The letter states that "[REDACTED] leased and operated a convenience store with us from May 1, 2001 until March 18, 2003." The letter does not identify [REDACTED]'s position in the company. [REDACTED]'s letter does not provide any information in support of the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.

The record of proceeding includes two notarized form-letter affidavits for [REDACTED] dated May 3, 2005. In the first affidavit, [REDACTED] states under penalty of perjury that [REDACTED] and his family were his tenants from approximately June 1981 until March 1988, that the family lived at [REDACTED], Fort Pierce, FL 34950 and paid rent on a cash basis. According to [REDACTED] "except for this personal attestation, no other records are available." In the second affidavit, [REDACTED] states under penalty of perjury that [REDACTED] worked for him from July 1981 until February 1988 as a fruit picker and was paid weekly in cash. Again, [REDACTED] states that "except for this personal attestation, no other records are available." Neither affidavit names the applicant. The declarant does not indicate if he met the applicant in 1981 or at any time, nor how frequently he had contact with the applicant. The AAO notes that on the Form I-687, the applicant listed [REDACTED] as his employer from July 1981 to February 1988, the same time period that [REDACTED] attests to have employed the applicant's father. However, the record of proceeding does not contain an affidavit from [REDACTED] confirming the applicant's employment during the same time period. 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, and attempts to explain or reconcile such inconsistencies, absent competent

objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Finally, the record of proceeding contains a statement from the applicant in which he explains that he is unable to procure evidence of his family's travel to Mexico in 1981 because according to the applicant's father, those documents were taken by a "Mexican agent."

None of the evidence provided establishes that the applicant was physically present or had continuous residence in the United States from 1981 to 1988 or that he entered the United States in 1981.

The director denied the application for temporary residence on June 28, 2006 without issuing a notice of intent to deny (NOID). Here, the director adjudicated the Form I-687 application on its merits. As a result, the director is found not to have denied the application for class membership. Therefore, the director was not required to issue a NOID prior to issuing the final decision in this case. In denying the application, the director found that the applicant failed to establish that he entered the United States prior to January 1, 1982 or that he met the necessary residency or continuous physical presence requirements. Thus, the director determined that the applicant had failed to meet his burden of proof by a preponderance of the evidence.

On appeal, the applicant does not provide additional information or evidence in support of his claim that he was physically present or had continuous residence in the United States from 1981 to 1988 or that he entered the United States in 1981.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, as well as the inconsistencies noted in the record, seriously detract 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 inconsistencies in the record and 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.