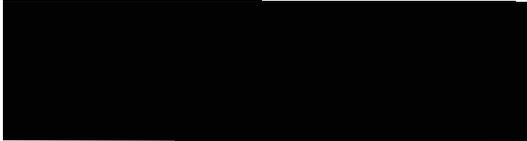




U.S. Citizenship
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FILE: [REDACTED]
MSC 06,066 10661

Office: NATIONAL BENEFITS CENTER

Date: MAR 11 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 Director, National Benefits Center, 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 reviewed the documentation submitted and found 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 provides two additional affidavits in support of his claim.

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).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and presence in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "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 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.* 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 during the requisite time period. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted letters from [REDACTED] and [REDACTED] and [REDACTED] and [REDACTED]. Each of these individuals claimed to have known the applicant for a number of years in his capacity as the caregiver for their grandmother or parent and all claimed that the applicant is an individual who possesses good moral character and a fine work ethic. However, none of these people specified the period of time for which they had known the applicant, nor did any of them indicate that they had known the applicant during all or a portion of the requisite time period. As such, the statements made by these five individuals have minimal probative value in supporting the applicant's claim.

The applicant also submitted three letters dated February 7, 2006 from [REDACTED], [REDACTED], and [REDACTED]. All three statements were virtually identical in their content in that all three affiants attested to the applicant's good moral character. However, none of the affiants gave any indication that they had known the applicant during the requisite time period. As such, the three notarized statements also have minimal probative value in supporting the applicant's residence claim.

On appeal, the applicant provided a notarized statement dated July 12, 2006 from [REDACTED] who claimed that the applicant worked for [REDACTED] as a caregiver from 1981 to 1987 and subsequently moved to Inglewood, California to work as a caregiver for [REDACTED] until 1992. However, this account of the applicant's employers and residences is not consistent with the information provided by the applicant in Nos. 30 and 33 of his application. Namely, the applicant claimed to have worked and lived in Las Vegas, Nevada from 1980 to 1984 and only claimed to have worked as [REDACTED]'s caregiver from 1985 to 1987. Contrary to the affiant's statements, the applicant did not claim to have moved to Inglewood until 1992 at which time he claimed he commenced his work as a caregiver for [REDACTED]. As [REDACTED]'s statements regarding the applicant's residence and employment are significantly inconsistent with the applicant's own account, his attestation has minimal probative value

in supporting the applicant's residence 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). Moreover, 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. *Id.* That being said, even though the affidavit dated July 14, 2006 from [REDACTED] is generally consistent with the information provided by the applicant, the fact that the applicant provided the inconsistent and unreliable statements from [REDACTED] severely compromises the validity of the applicant's claim.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period, and has submitted attestations from only two people concerning that period. However, as previously stated, one of the affiants who attested to the applicant's residence provided information that is considerably distinct from the applicant's own account of his residence and employment history in the United States. As such, the applicant's entire claim rests upon the statements of a single affiant whose testimony has been compromised by the submission of other documentation that has been found to lack credibility.

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.