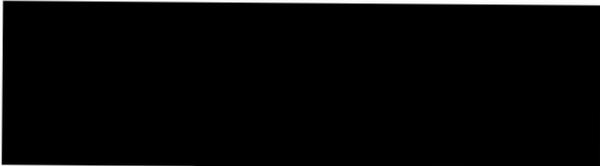




U.S. Citizenship
and Immigration
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FILE: [REDACTED]
MSC-05-138-10004

Office: NATIONAL BENEFITS CENTER

Date: **MAR 13 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. 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. Further, the director determined that the applicant has not submitted sufficient relevant, probative, and credible evidence to explain or answer the questions raised, concerning the applicant's residency, as stated in the Notice of Intent to Deny (NOID). 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.

As a preface to the following discussion, on appeal, the applicant has submitted a 14-page statement upon appeal concerning CIS' review of adjustment applications prior to acceptance of applications and filing with payment of the proper filing fees. The appeal statement is not relevant to the Form I-687, Application for Status as a Temporary Resident concerning the issues of the applicant's residency. Since this matter is an appeal from the director's determination, the AAO's jurisdiction in this matter relates to the applicant's appeal of that determination and not to CIS' review of adjustment applications prior to acceptance of applications by their filing with payment of the proper filing fees.

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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his or her burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on February 15, 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 ██████████ Woodside, New York from January 1980 to August 1990, about ten years. Similarly, at part #33, he showed his first employment in the United States to be in self-employment in the occupation of construction at the annual wage of \$25,000.00 for over 11 years from January 1980 to April 1991.

No evidence such as rent receipts, a lease, utility bills, tax receipts, U.S. mail directed to the applicant at the Woodside, New York, address, pay statements, tax records, employment references, or information concerning locations and construction projects worked was introduced by the applicant to substantiate the claim of residency during the requisite period or employment.

The applicant submitted the following relevant documentation in this matter: a biographic page from the applicant’s passport; a listing of his residences in the United States from January 1980 to present

(i.e. January 25, 2005); an affidavit made March 8, 2006; a form statement signed by the applicant dated January 25, 2005; a copy of a press release relating to CSS/Newman legalization cases; and the Catholic Social Services case Order and the "Joint Stipulation Regarding Settlement" document regarding the action first above mentioned.

The director referenced to the applicant's testimony under oath before a CIS officer on March 8, 2006. According to the applicant in that affidavit, he first came to the United States in January 1980, and he spent two days in San Diego, California then flew to New York. The applicant stated in the affidavit that "I never applied for amnesty."

As further evidence, the applicant submitted four notarized statements as follows:

- A notarized statement was submitted by [REDACTED] of Brentwood, New York, as dated October 15, 2004. [REDACTED] stated that he recalled meeting the applicant and an individual named [REDACTED] in 1981 in Queens, New York, at a family gathering 23 years ago and he stated that "our families are very close."

A notarized statement was submitted by [REDACTED] of Brentwood, New York, as dated October 15, 2004. [REDACTED] stated she has known the applicant and [REDACTED] since 1981. She said that she met them both in Queens, New York, at a family gathering 23 years ago and that she had worked with [REDACTED] at various jobs "through out these years."

- A notarized statement was submitted by [REDACTED] as dated January 18, 2005. Ms. [REDACTED] stated that 25 years ago the applicant came to the United States in January 1980. Thereafter [REDACTED] stated the calendar intervals that the applicant departed to go to Ecuador and returned to the United States in 1982, 1983 and 1984, in each instance citing month and year.
- A notarized statement was submitted by [REDACTED] and [REDACTED] as dated "the fifth day of 2006." The affiants stated that 25 years ago they first met the applicant in a construction project in 1981, and invited the applicant to a family reunion in 1982. Thereafter for the next five years the affiants cite a specific instance when and where they encountered the applicant in the United States.

It is not explained in the statements who [REDACTED] is or if the applicant and [REDACTED] lived together. If Mr. and Ms. [REDACTED] met the applicant in 1981, it is not explained how [REDACTED] knew that the applicant came to the United States in January 1980, at least one year before these individuals met in Queens, New York. It is not explained how [REDACTED] could recall dates that the applicant departed to Ecuador and returned to the United States in 1982, 1983 and 1984 by month and year. It is noted that none of the declarants stated whether they have direct, personal knowledge of the address at which he was residing during the critical time period between 1981 and 1983. The lack of detail regarding the events and circumstances of the applicant's residence is significant given each declarant's claim to have a friendship with the applicant spanning 25 years.

For these reasons, all of these declarations from the applicant's declarant's have very limited probative value as evidence of his continuous residence in the United States since a date prior to January 1, 1982.

The director denied the application for temporary residence on March 11, 2006. In denying the application, the director found that the applicant's testimony that he entered the United States from Mexico in January 1980 was not supported by evidence of such entry, nor do the affidavits submitted by Mr. and Ms. [REDACTED] provide any proof through direct personal knowledge of the applicant's residence in the United States during the requisite period. The statements and affidavits lack credibility and probative value for the reasons noted.

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 and contradictions 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 he 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.