

identifying data deleted to
prevent disclosure of unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

LI

FILE:

MSC-04-309-19463

Office: HARTFORD

Date: MAR 14 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 "D. 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, Hartford. 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 resided in the United States since prior to November 1985.

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 burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The applicant submitted a Form I-687 Application and Supplement to Citizenship and Immigration Services (CIS) on August 4, 2004. The applicant signed this application under penalty of perjury, certifying that the information is true and correct. 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 Stanford, Connecticut, from 1988 until an unrecorded date. Similarly, at part #33, he showed his first employment in the United States to be for [REDACTED] in Stanford, Connecticut from 1988 until 1991. The record shows that the applicant submitted another Form I-687 application to CIS on August 25, 2005. Part #30 of this application shows the applicant's first address in the United States as Miami, Florida from 1987 until 1988. Part #33 of this application again shows the applicant's first employment in the United States with [REDACTED] in Stanford, Connecticut from 1988 until 1991.

The Form I-687 applications submitted by the applicant are inconsistent on the date and location of the applicant's first residence in the United States. The applicant's Form I-687 application filed August 4, 2004 shows his first address in the United States as Stanford, Connecticut from

1988 until an unrecorded date. However, his Form I-687 application filed August 25, 2005 shows his first address in the United States as Miami, Florida from 1987 until 1988.

Furthermore, the applicant's Form I-687 applications are prima facie evidence of the applicant's ineligibility for temporary resident status. These applications indicate that the applicant first resided in the United States in either 1987 or 1988. The primary eligibility requirement for temporary resident status is that an applicant must establish that he entered the United States before January 1, 1982. See Section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2). The applicant has failed to provide any information on his Form I-687 application to establish his continuous unlawful residence in the United States since prior to January 1, 1982.

In an attempt to establish continuous unlawful residence in this country, the applicant provided voluminous documentation. This proceeding will focus solely on those documents that relate to the applicant's residence in the United States during the requisite period.

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

- A copy of the applicant's March 4, 1988 approval notice for his Form I-700, Application for Status as Temporary Resident as a Special Agricultural Worker;
- A copy of the applicant's Form I-705, Affidavit Confirming Seasonal Agricultural Employment. This application states that he applicant worked at [REDACTED] in Dade, Florida from November 1985 until April 1986;
- A copy of interview notes, dated September 28, 1987, from the Immigration and Naturalization Service legalization officer who interviewed the applicant pursuant to his Form I-700 application;
- A copy of an affidavit from [REDACTED], Farm Labor Contractor/Grower, with [REDACTED] sworn on September 26, 1987. The affidavit provides that the applicant was employed at this farm to pick beans "on the following man days" between May 1, 1985 and May 1, 1986. The file contains a "mandays worksheet" from [REDACTED] which indicates employment from November 1985 until April 1986;
- A copy of the applicant's passport, which contains a United States visa issued in Caracas, Venezuela on August 27, 1987. This visa page of the applicant's passport shows that the applicant entered the United States on September 13, 1987 at New York, New York;
- A copy of the applicant's Form I-688, Temporary Resident Card, issued September 28, 1987;
- A copy of an affidavit from [REDACTED] sworn on August 10, 1989, which states that the affiant has known the applicant since 1985;
- A copy of the applicant's Form I-700, which lists the applicant's employment with [REDACTED] Farm from November 1985 until April 1986. This form also records the applicant's entry into the United States as February 10, 1985 in Miami, Florida;
- A copy of an affidavit from [REDACTED], sworn on August 10, 1989, which states that the affiant has known the applicant since 1984;

- A statement from the applicant, dated August 3, 2004, which states that he came to the United States in 1987; and
- A copy of the applicant's Social Security Statement, dated October 29, 2001, which records the his earnings record since 1987. The applicant filed this document as evidence with his Form I-485, Application for Status as a Permanent Resident, pursuant to section 1104 of the Legal Immigration Family Equity Act (LIFE) Act.

These documents fail to establish the applicant's residence in the United States during the entire requisite period. The applicant has not established a consistent date of first entry into the United States. The applicant's Form I-687 applications indicate his first residence in the United States as either 1987 or 1988. This is inconsistent with the applicant's supporting documentation, which indicates he has resided in the United States since either 1984 or 1985. Regardless of these inconsistencies, the applicant has failed to submit any documentation that would establish his residence in the United States since prior to January 1, 1982.

On February 21, 2006, the director, National Benefits Center, issued a Notice of Intent to Deny (NOID) to the applicant. The NOID provides that the applicant failed to submit documentation to establish his eligibility for Temporary Resident Status. The applicant was afforded thirty (30) days to provide additional evidence in response to the NOID. In rebuttal to the NOID, the applicant submitted a letter, which provides, "I don't have the documents that I prove [sic] my present [sic] in the USA in 1982 but I tried to apply for legalization in 1987 . . . I send the documents that I prove [sic] my continuously [sic] physically present in the United States except for brief [sic] since August 1987."

The applicant resubmitted with the NOID several of the documents he initially filed with his application. The applicant also submitted additional documentation as follows:

- Copies of the applicant's 1988 Form W-2, Wage and Tax Statements;
- A copy of the applicant's 1988 income tax return;
- A copy of a letter regarding the applicant's Social Security Number from the Immigration and Naturalization Service Legalization Office in Fort Lauderdale, Florida;
- A copy of an undated statement from [REDACTED], which states that he has known the applicant from 1987 until 1991; and
- A copy of an undated statement from [REDACTED] which states that she has known the applicant from 1987 until 1991.

These documents fail to overcome the basis for the director's NOID. The applicant did not submit any documents that establish his continuous residence in the United States since prior to January 1, 1982. The applicant admits in his rebuttal statement that he does not have any documents to corroborate his residence in the United States since 1982. Pursuant to 8 C.F.R. § 245a.2(d)(6), to meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony.

In denying the application, the district director, Hartford, noted that during the applicant's interview he testified that he had initially entered the United States on or before November 1985. The director also noted that the applicant testified he had never been in the United States prior to January 1, 1982. The director determined that the applicant has not established his continuous unlawful residence in the United States since prior to January 1, 1982. The director concluded that the applicant failed to establish his eligibility to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

Although the director was correct in his overall decision, the AAO notes that there are two errors in his analysis. Firstly, the director determined, "you had left the United States twice: May 1990 to August 1990 and January 1991 to October 2001 . . . Your first absence exceeds the 45-day limit and your second absence exceeds the 180-day limit and both absences were not brief, casual or innocent." An applicant for temporary resident status pursuant to the CSS/Newman Settlement agreements is required to establish continuous residence during the requisite period of prior to January 1, 1982 until the date the application is filed during the original legalization application period of May 5, 1987 to May 4, 1988. See 8 C.F.R. § 245a.2(h); CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10. Therefore, the applicant's absences in May 1990 and January 1991 are not relevant to this proceeding. Secondly, the director determined, "[y]ou are considered not to [sic] a class member of CSS/Newman (LULAC) because you never entered the United States illegally prior to January 1, 1982." An applicant for temporary resident status under Section 245A of the Act does not need to establish illegal entry prior to January 1, 1982. Such an applicant only needs to establish unlawful status in the United States prior to January 1, 1982. 8 C.F.R. § 245a.2(b). Nevertheless, the director's actions must be considered to be harmless error as the AAO conducts a de novo review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(d)(6).

On appeal, the applicant asserts that during his interview he testified that he initially entered the United States before November 1985 on a freighter. The applicant claims that his first absence from the United States was for fifteen days. The applicant submitted a copy of his Form I-694, Notice of Appeal, dated March 12, 1988, in regard to the denial of his Form I-700 application. The applicant also resubmitted his previously filed documents, the majority of which relate to his Form I-700 application.

Under section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2), an applicant must establish that he entered the United States *before* January 1, 1982 to be eligible for temporary resident status. The director noted that during the applicant's interview, he testified that he initially entered the United States on or before November 1, 1985. On appeal, the applicant asserts that he testified his initial entry was before November 1, 1985. However, the applicant has failed to clarify his exact date of entry into the United States. Moreover, the applicant has provided conflicting documentation of his initial date of residence in the United States. The applicant's Form I-687 applications provide that he entered the United States in either 1987 or 1988. The evidence the applicant filed with his Form I-687 application indicates his earliest date of residence in the

United States as either 1984 or 1985. Finally, the applicant has failed to provide any documentary evidence of his residence in the United States since prior to January 1, 1982. The applicant has been given the opportunity to satisfy his burden of proof with a broad range of evidence. *See* 8 C.F.R. § 245a.2(d)(3). The applicant's failure to provide probative evidence to establish his continuous residence in the United States during the *entire* requisite period renders a finding that he has failed to satisfy his burden of proof, as delineated in 8 C.F.R. § 245a.2(d)(5).

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.