

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

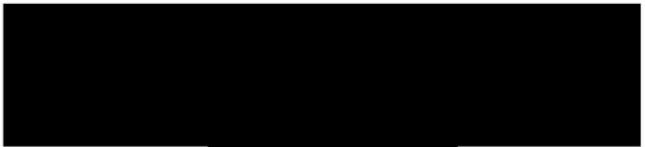
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

L1



FILE: MSC-06-049-12878 Office: National Benefits Center Date: MAR 21 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. If your appeal was dismissed or rejected, all documents have been returned to the National Records Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

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) dated December 16, 2005. 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 requests the director to reconsider his decision as the applicant entered the United States as a child "about 2/3 years of age" and he is submitting letters from people who knew his parents and baby-sat for the applicant.

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.

According to evidence in the record of proceeding, the applicant’s Mexican passport, the applicant was born May 25, 1978.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on November 18, 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 at [REDACTED] New York, New York, from December 1981 to July 1999. Similarly, at part #33, he showed his first employment in the United States to be in self-employment at [REDACTED] Bronx, New York in the occupation of construction from September 1999 to the present (i.e. November 15, 2005).

The applicant submitted two brief letter statements from [REDACTED] and [REDACTED] in response to the director’s NOID dated December 16, 2005.

[REDACTED] stated in his letter dated January 12, 2006 that the applicant “is and has been a longtime member of Saint Ann’s Catholic Church.” The regulation at 8 C.F.R. § 245a.2(d)(3)(v) states that attestations by churches to the applicant's residence by letter must show inclusive dates of

membership, state the address where applicant resided during membership period, includes the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery, establish how the author knows the applicant; and establishes the origin of the information being attested to. [REDACTED] letter has not provided any of this required information.

[REDACTED] stated in his letter dated January 12, 2006 "I have known {the applicant} for many years. He is very responsible and hard working men [sic]."

On appeal, the applicant submitted two letter statements from [REDACTED] and [REDACTED] both dated September 27, 2006.

[REDACTED] stated in her letter that she met the applicant in June 1981 and was hired by his mother to watch the applicant in the evenings while the applicant's mother worked. She stated that she watched over the applicant until September 1981.

[REDACTED] stated in her letter that she watched over the applicant for his mother from October 1981 until Christmas 1981.

A credible affidavit is a notarized statement that includes a biographic (i.e. photo identification for example) document that identifies the affiant, proof that the affiant was in the United States during the requisite period, an explanation and proof of the relationship between the affiant and the applicant, and a current working telephone number at which the affiant may be contacted (only the statement of [REDACTED] contains a telephone number. None of the four statements set forth above are notarized affidavits, none have a document that identifies the affiant or proof that the affiant was in the United States during the requisite period. No statement provides an explanation with proof of the relationship between the affiant and the applicant.

Furthermore, the statements from [REDACTED] and [REDACTED], since they do not provide evidence of entry into the United States before January 1, 1982, or the continuous residence in the United States of the applicant in an unlawful status since such date, have no probative value in this matter.

While the two statements of [REDACTED] and [REDACTED] indicate that they both observed the applicant's presence in the United States 25 years before, both statements fail to provide detail when and where they first encountered the applicant and failed to provide any details or substantiation of their employment.

As already stated, the applicant requests the director to reconsider his decision as the applicant entered the United States as a child "about 2/3 years of age." The regulation at 8 C.F.R. § 245a.2(d)(3)(iii) provides that school records (letters, report cards, etc.) from the schools that the applicant or their children have attended in the United States may be introduced to must show the name of school and periods of school attendance pertaining to the applicant. Further, the applicant failed to submit vaccination or medical records. He did not provide an affidavit from the responsible

adult who reared the applicant. No evidence was submitted that the applicant attended school in the United States.

The director denied the application for temporary residence on July 22, 2006. In denying the application, the director found that the applicant's statement that he entered the United States in 1981 is not credible. The director determined that the applicant had failed to meet his burden of proof by a preponderance of the evidence.

In summary, the applicant has provided insufficient evidence of residence in the United States relating to the requisite period or of entry to the United States before January 1, 1982. The statements lack 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.