

PUBLIC COPY

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



**U.S. Citizenship
and Immigration
Services**

L1



FILE: [Redacted]
MSC-06-075-13117

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. 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.

On appeal, the applicant asserts that a photograph submitted into evidence is the applicant as a boy taken in the State of New York in October on 1982.

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 to Citizenship and Immigration Services (CIS) on December 14, 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 Flushing, New York, from December 1981 to October 1989. Similarly, at part #33, he showed his first employment in the United States to be for the Imperial Wok Restaurant, at 747 Columbus Ave., New York, New York, from August 1995 to October 1998.

Relevant information submitted by the applicant was a biographic page from the applicant's passport, an undated photograph,¹ and a letter from the applicant dated June 21, 2006.

In addition, the record of proceeding as consolidated with another case² pertaining to the applicant that contains other documents as follows: a CIS Form G-325A, Biographic Information, prepared and signed under penalty of perjury by the applicant on February 11, 2005, stating that the

¹ There is no indication on the photo who the subject of the photo is, when or where it was taken or the identity of the photographer.

² The applicant filed an I-140 immigrant petition (CIS identification number EAC 05 09853065).

applicant's last residence outside the United States was at [REDACTED], Perak, Malaysia from September 1980 to November 1989; a nonimmigrant visa issued on October 31, 1989, by the United States consulate at Kuala Lumpur, Malaysia to the applicant identified as "B-1/B-2" and as "traveling with mother;" a CIS Form I-94 Departure Record evidencing the applicant's admission into the United States on November 24, 1989; and a CIS Form I-140 petition prepared by the applicant stating the applicant's date of arrival into the United States as November 24, 1982 in B-2 visitor's status.

According to a birth certificate in the record of proceeding, the applicant was born on November 25, 1972, in Malaysia. Along with the above-mentioned I-140 petition, the applicant prepared and submitted an explanatory letter dated February 11, 2005, to support his petition in the occupation of an tallow carving artist. In the letter the applicant stated that his hometown was Perak, Malaysia, and at the age of 12 (i.e. 1984) the applicant was famous for his carving skills in his hometown. The applicant recounts in the letter that he thereafter attended the crafts arts school and he submitted with that petition certificates of achievement he received in Malaysia and artwork accomplished in Malaysia.

The director denied the application for temporary residence on June 9, 2006. The director determined that the applicant had failed to meet his burden of proof by a preponderance of the evidence.

The applicant has not provided any evidence of residence in the United States relating to the requisite period or of entry to the United States before January 1, 1982. Based upon the totality of the evidence as recited above, the beneficiary resided in Perak, Malaysia where he trained as an artist prior to the applicant's admission into the United States on November 24, 1989.

The applicant's statement in the Form I-687 application that he resided in Flushing, New York, from December 1981 to October 1989 lacks credibility and probative value as there is no correlative evidence submitted to support this statement such as declarant's statements, rent or tax receipts or utility bills. Rather, the information provided by the applicant in the Form G-325A that he resided at [REDACTED], Perak, Malaysia from September 1980 to November 1989 directly contradicts the applicant statements in the CIS Form I-687.

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.