

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

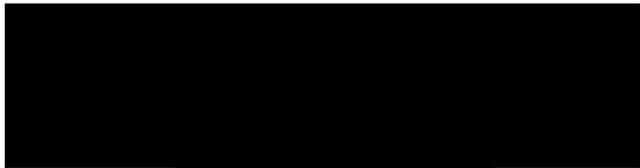
PUBLIC COPY

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



U.S. Citizenship
and Immigration
Services

L1



FILE: [REDACTED]
MSC-05-231-12386

Office: LOS ANGELES

Date: **MAR 25 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 Benefits 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 District Director, Los Angeles. 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 his eligibility for temporary residence status and submits additional documentation in an attempt to substantiate 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 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. See CSS Settlement Agreement paragraph 11 at page 6 and 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 May 19, 2005.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted a letter from [REDACTED] in which he stated that he has known the applicant since 1981. Here, the declarant has failed to specify the circumstances under which he met the applicant and the frequency with which he saw the applicant during the requisite period. The declarant has not provided evidence that he himself was present in the United States during the requisite period. He has failed to provide any relevant and verifiable testimony, such as the applicant's place of residence in this country, to corroborate his claim of residence in the United States since prior to January 1, 1982. Because this letter is significantly lacking in detail it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

The applicant submitted the following documentation:

- Copies of post marked receipts for registered mail bearing the applicant's name and dated October of 1981; June, July, and September of 1982; January of 1983; February, March, and July of 1984; and January and April of 1985;
- A copy of a Travelers Express Company money order receipt bearing the applicant's name and dated December 7, 1981;
- A copy of a postmarked envelope addressed to the applicant and dated December 15, 1986;
- Copies of money order receipts bearing the applicant's name and dated July of 1984 and January of 1986;
- A copy of a receipt from Rena-Ware Distributors bearing the applicant's name and dated August 12, 1983;
- A receipt from San Fernando Loan Company bearing the applicant's name and dated December 31, 1984;
- A copy of a pay statement from Glendale Blue Print Company bearing the applicant's name and dated July 15, 1986; and,
- A copy of a sales receipt bearing the applicant's name and dated April 16, 1987;
- A copy of a receipt from Libreria Gensis bearing the applicant's name and dated August 17, 1988.

The director determined that the applicant had failed to submit sufficient evidence and requested additional evidence of his presence in the United States from 1981 to 1988, and a statement from the Social Security Administration demonstrating the years he worked in the United States.

In response to the director's request for evidence, the applicant submitted the Social Security Administration printout showing the applicant's years of employment from 1990 through 2004.

In denying the application the director determined that the applicant had failed to submit sufficient evidence in response to the request for evidence, and had failed to demonstrate, through his Social Security Administration printout, continuous unlawful residence in the United States during the requisite period.

On appeal, the applicant claims his eligibility for the immigration benefits sought and submits as evidence copies of his Internal Revenue Service (IRS) Form 1040 for the 2003 and 2004 tax years, IRS Form W-2 for the 2003 tax year, and receipts from K-Bros Industries, Inc. dated October of 2005. The applicant resubmitted copies of the receipts noted above.

Here, the applicant has failed to address the issues discussed by the director in her denial. Although the applicant has provided some evidence, he has not provided sufficient contemporaneous evidence to demonstrate his continuous residence in the United States throughout the requisite period. The single attestation submitted lacks detail, and can therefore be accorded only minimal weight in establishing that the applicant resided in the United States as

claimed. The documents dated subsequent to the requisite period are irrelevant to the applicant's claim of eligibility.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of this 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 applicant's reliance upon documents with minimal probative value and an attestation that lacks specificity, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States for the requisite period 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.