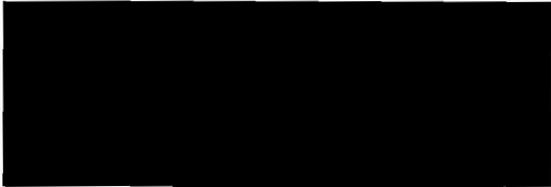




U.S. Citizenship
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FILE: [REDACTED]
MSC 06 054 13220

Office: LOS ANGELES

Date: **MAY 08 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 District Director, Los Angeles, and that 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 noted that the applicant testified under oath and in writing that he was absent from the United States for five months in 1985. The director acknowledged that the applicant submitted affidavits from individuals who claimed to have knowledge of the beneficiary's residence in the United States during the requisite period, but noted that the affidavits were insufficient to establish the beneficiary's continuous residence in the United States. The director also noted other facts in the record which the director believed cast doubt on the credibility of the applicant's claim. 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.

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 be physically present in the United States from November 6, 1986 until the date of filing the application. 8 C.F.R. § 245a.2(b).

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) 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 periods, 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).

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.

The applicant has the burden of proving by a preponderance of the evidence that he has resided in the United States for the requisite period. 8 C.F.R. § 245a.2(d)(5). To meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. 8 C.F.R. § 245a.2(d)(6). The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that an applicant may submit to establish proof of continuous residence in the United States during the requisite period. This list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts or letters.

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 record shows that the applicant submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to Citizenship and Immigration Services (CIS) on November 23, 2005. The applicant signed this form under penalty of perjury, certifying that the information he provided 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 indicated that he resided at [REDACTED], San Diego, California from June 1981 until June 1990. Part # 33 of this application requests the applicant to list his employment in the United States since his entry. The applicant indicated that from June 1981 until November 1985 he was supported by a friend, and that from November 1985 until January 1994, he was employed by the City Delicatessen at [REDACTED] San Diego, California.

The applicant was interviewed under oath by a CIS officer on July 3, 2006. At the interview the applicant submitted the following additional evidence:

- An affidavit dated November 1, 2005 from [REDACTED] who stated that he currently resides at Inglewood, California. Mr. [REDACTED] indicated that he has known the applicant since 1985 when they met at a party and he is married to the applicant's sister. Mr. [REDACTED] did not indicate where or how he met the applicant, or how frequently or under what circumstances he saw the applicant during the requisite period, nor did he provide any other details regarding the events and circumstances of the applicant's residence in the United States that would tend to lend probative value to his statement. Moreover, he did not specifically state that he has direct, personal knowledge that the applicant continuously resided in the United States during the requisite period. For these reasons, this affidavit can be given only minimal weight as corroborating evidence.
- A notarized letter dated July 1, 2006 from [REDACTED] who stated that she currently resides at [REDACTED] Van Nuys, California. Ms. [REDACTED] indicated that she has known the applicant since January 1983. Ms. [REDACTED] did not indicate where or how she met the applicant, or how frequently or under what circumstances she saw the applicant during the requisite period, nor did she provide any other details regarding the events and circumstances of the applicant's residence in the United States that would tend to lend probative value to her statement. Moreover, she did not specifically state that she has direct, personal knowledge that the applicant continuously resided in the United States during the requisite period. Like the previous affidavit, this letter can be given only minimal weight as corroborating evidence.
- A notarized letter dated June 26, 2006 from [REDACTED] who stated that he also currently resides at [REDACTED] Van Nuys, California. Mr. [REDACTED] indicated that he has known the applicant since 1987 when the applicant lived with his cousin, [REDACTED]. He did not indicate how frequently or under what circumstances he saw the applicant during the requisite period, nor did he provide any other details regarding the events and circumstances of the applicant's residence in the United States that would tend to lend probative value to his statement. Thus, like the previous evidence, this letter can be given only minimal weight.
- A notarized letter dated January 4, 2006 from [REDACTED] who stated that he currently resides at [REDACTED] Santa Barbara, California. Mr. [REDACTED] indicated that he has known the applicant since 1982. He provided no other relevant information that would support the applicant's claims of continuous residency during the requisite period. Thus, like the previous evidence, this letter can be given only minimal weight.
- Two notarized letters, one from [REDACTED] z, and one from [REDACTED] z. Jose indicates that he has known the applicant since 1985 and Juan indicates that he has known the applicant since 1982. Neither letter provides any further information regarding the applicant's residency in the United States, or how frequently or under what circumstances they saw the applicant during the requisite period. These letters will be given no weight.

- Finally, the applicant submitted a notarized letter from [REDACTED]. Mr. [REDACTED] lists his current address as [REDACTED], San Diego, California. Mr. [REDACTED] states that “. . . [REDACTED] was living with me from January 1981 through January 1982. He lived with me for one year at the address of [REDACTED], in San Diego, California. This conflicts with the address that the applicant provided on his legalization for the same time period. Specifically, the applicant stated that that he resided at [REDACTED], San Diego California from June 1981 until June 1990. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92. Since the information in the affidavit conflicts with the address listed on the legalization, and the applicant has not addressed and/or explained the inconsistency, this affidavit will be given no weight.

Following the interview on July 3, 2006, the director determined that the applicant failed to meet his burden of proof by a preponderance of the evidence that he resided continuously in the U.S. for the requisite periods and denied the application. In the denial, the director noted that the five month absence in 1985 exceeded the 45 day limit. 8 C.F.R § 245a.2(h)(1)(i).

On appeal, the applicant submitted a statement indicating that his “. . . eligibility meets every criteria of this part . . . I never attended school in the United States for a personal reason . . .my priority was to survive.” He submitted no additional evidence of either his entry prior to January 1, 1982 or his continuous residence during the requisite period.

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 affidavits with minimal probative value, and his own inconsistent statements on his Forms I-687, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application 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.