

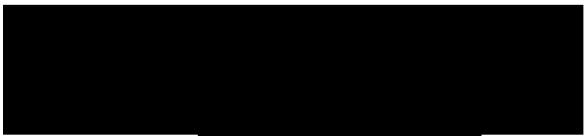


U.S. Citizenship  
and Immigration  
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FILE:

MSC-06-075-13259

Office: LOS ANGELES

Date: **MAY 13 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. 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 claim of eligibility for temporary resident status and submits an affidavit.

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).

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. *See* 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 and Supplement to Citizenship and Immigration Services (CIS) on December 14, 2005. The applicant indicated on his Form I-687 application at part # 30, that his place of residence since first arriving in the United States included South Church in Lodi, California, from 1981 to 1983; and [REDACTED], San Jose, California, from 1984 to 1991.

In response to the director's Notice of Intent to Deny, dated January 31, 2006, the applicant submitted the following attestations:

- An affidavit from [REDACTED] dated February 22, 2006, in which she stated that she has known the applicant since 1984 when she was in the United States on vacation. She also stated that the applicant offered her accommodations during her stay. Here, the affiant fails to show the frequency in which she saw the applicant during the requisite period. There is nothing in the record to demonstrate that the affiant herself was present in the country throughout the requisite period. It is further noted that the affiant's statement is insufficient to support the applicant's claim of continuous residence in the United States since before January 1, 1982. The affidavit is significantly lacking in detail and therefore, can be accorded only minimal weight in establishing that the applicant resided in the United States throughout the requisite period.
- An affidavit from [REDACTED] dated February 22, 2006, in which she stated that the applicant has been a family friend for more than 30 years and that he maintained residence at [REDACTED]

Ontario, California, from 1983 to the present. This statement is inconsistent with the statement made by the applicant on his Form I-687 application at part #30 where he indicated that his place of residence from 1983 to 1991 was San Jose, California. This inconsistency calls into question the affiant's ability to confirm that the applicant resided in the United States throughout the requisite period. Because this declaration contains inconsistent statements, doubt is cast on the assertions made. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). In addition, this declaration is inconsistent with the statement she made in the affidavit noted above in that she initially stated that she met the applicant in 1984 during her vacation in the United States. There has been no explanation given for this discrepancy. Because this letter is inconsistent with statements made by the applicant and is inconsistent with her attestation in the affidavit noted above, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

- An affidavit from dated February 21, 2006, in which he stated that he has personally known the applicant since late 1984 when he had an opportunity to visit the United States on vacation for three months. He further stated that he stayed with the applicant during the three months. Here, the affiant fails to show the frequency in which he saw the applicant throughout the requisite period. There is nothing in the record to demonstrate that the affiant himself was present in the country throughout the requisite period. It is noted that the affiant admits to being in the United States for three months in late 1984 while on vacation. It is further noted that the affiant's statement is insufficient to support the applicant's claim of continuous residence in the United States since before January 1, 1982. The affidavit is significantly lacking in detail and therefore, can be accorded only minimal weight in establishing that the applicant resided in the United States throughout the requisite period.
- An affidavit from dated February 21, 2006, in which the affiant stated that the applicant resided at , Ontario, California, from 1983 to the present, and that the applicant has been his friend since 1968. Here, the information is inconsistent with the statements made by the applicant on his Form I-687 application in that he listed his address at part #30 as , San Jose, California, from 1983 to 1991. This inconsistency calls into question the affiant's ability to confirm that the applicant resided in the United States throughout the requisite period. It is also noted that this declaration is inconsistent with the attestation made by this affiant in the affidavit noted above in that the applicant initially stated that he met the applicant in 1983 while on vacation in the United States. Because this affidavit is inconsistent with statements made by the applicant on his Form I-687 application, and is in conflict with a statement made by the affiant in the

affidavit noted above, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

In denying the application the director noted that there was no evidence presented to demonstrate that the affiants had direct personal knowledge of the events and circumstances of the applicant's residency throughout the requisite period.

On appeal, the applicant asserts that he has submitted sufficient documentation to attest to his eligibility for temporary resident status and he submits the following attestation:

- An affidavit from [REDACTED] dated July 5, 2006, in which she states that she is a resident of Canada, that she has known the applicant since 1975 when they met in Laoag City. She states that they became close friends after their initial meeting. She also states that she was informed that the applicant had left for the United States in 1981. She further states that she received a phone call from the applicant informing her that he was going to be moving to California in a week, and that this information was corroborated by the applicant's parents. She states that she was aware of the applicant residing at Artesia in California with a friend because one of her relatives phoned her to convey the information. Lastly, she states that she was aware of the applicant moving from city to city from 1984 onward. It is noted that the affiant admits to residing in Canada, except for a brief vacation in the United States in 1984, throughout the requisite period. Here, there is no evidence to establish that the affiant's information is based upon her firsthand knowledge of the applicant's presence in the United States, and therefore, it can be accorded only minimal weight in establishing that the applicant resided in the United States throughout the requisite period.

In the instant case, the applicant has failed to provide sufficient, probative evidence to establish his continuous unlawful residence in the United States since prior to January 1, 1982. The attestations submitted by the applicant were inconsistent with the information he provided on his Form I-687 application and were not accompanied by corroborative evidence. In addition, there has been no evidence presented to show that the affiant [REDACTED] attestations on appeal are based upon her firsthand knowledge of the events and circumstances surrounding the applicant's presence in the United States throughout 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 attestations that are inconsistent with his own, are not based upon firsthand knowledge, and which have minimal probative value, 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.