

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

L1

PUBLIC COPY



FILE: [REDACTED]
MSC-06-074-11744

Office: LOS ANGELES

Date: **MAY 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 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 resubmits affidavits as evidence.

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 13, 2005. The applicant claims to have entered the United States in January of 1982. The applicant's date of birth is June 12, 1972. At the time of his alleged entry into the United States, the applicant was nine years old.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted the following attestations:

- An affidavit from [REDACTED] dated December 6, 2005, in which she stated that she has known the applicant since 1987, and that he is her child's godfather. She further stated that she visits with the applicant regularly. Here, there is no evidence presented to demonstrate that the affiant was aware of the applicant's presence in the United States prior to 1987. Moreover, there is no indication that she first met the applicant in the United States. Therefore, the affidavit can be accorded only minimum weight in establishing that the applicant resided in the United States during the requisite period.
- An affidavit from [REDACTED] dated December 2, 2005, in which she stated that she has known the applicant since 1984 and that they remain good friends. Here, there is no evidence presented to demonstrate that the affiant was aware of the applicant's presence in the United States prior to 1984. Furthermore, the affiant fails to provide any information to corroborate her personal knowledge of the applicant's continuous residence in the United

States since 1984. Therefore, the affidavit can be accorded only minimum weight in establishing that the applicant resided in the United States during the requisite period.

- An affidavit from [REDACTED] dated December 2, 2005, in which he stated that the applicant lived close to him since 1988 and that he has known the applicant since 1982, when they were both in school. Here, the affiant 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 affiant fails to indicate the name of the school he attended. The affiant has not provided evidence to demonstrate that he himself was present in the United States throughout the requisite period. He has failed to provide any relevant and verifiable testimony, such as the applicant's specific place of residence in this country, to corroborate the applicant's claim of residence in the United States since prior to January 1, 1982. The attestation lacks detail that would lend credibility to the claimed relationship with the applicant, and therefore, it 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 December 1, 2005, in which he stated that the applicant came to the United States and lived with him at [REDACTED], Sun Valley, California, since 1985. He further stated that since 1985 he and the applicant have attended family gatherings and church reunions. The statement made by the affiant is inconsistent with the applicant's statement on his Form I-687 application, at part #30 where he indicated that he lived at [REDACTED] North Hollywood, California, from January of 1985 to January of 1990. This inconsistency calls into question the affiant's ability to confirm that the applicant resided in the United States during the requisite period. Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. 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, 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). Because this affidavit contains statements that conflict with what the applicant showed on his Form I-687 application, doubt is cast on the assertions made. Because the statement conflicts with other evidence in the record, and because it is significantly lacking in detail, it can be accorded only minimum weight in establishing that the applicant resided in the United States during the requisite period.

In denying the application the director noted that the applicant stated during his interview with the immigration officer on April 21, 2006 that he first entered the United States in July of 1982, and that he was absent from the country from December of 1985 to February of 1987. The director further noted that the applicant had failed to establish his continuous residence and physical presence in the United States since before January 1, 1982.

On appeal, the applicant asserts that he was nervous during his interview with the immigration officer and meant to state that he arrived in the United States in January of 1982, and that he was absent from the

country from June of 1987 to July of 1987. The applicant further asserts that the bus company in Mexico did employ him; but that he only worked for that company during the time he was in that country in 1987. The applicant resubmits copies of affidavits from [REDACTED] and [REDACTED]

In the instant case, the applicant has failed to provide sufficient, credible and probative evidence to establish his continuous unlawful residence in the United States since prior to January 1, 1982 and his continuous physical presence in the country during the requisite period. The applicant fails to submit documentary evidence to substantiate his assertions on appeal. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Furthermore, the affidavits that the applicant submitted are lacking in detail and contain conflicting statements therefore, they can be accorded only minimal weight in establishing that he resided in the United States throughout the requisite period.

The applicant claims to have entered the United States in January of 1982. The applicant's date of birth is June 12, 1972. At the time of his alleged entry into the United States, the applicant was 9 years old. Although the applicant claims to have resided in the United States since he was 9 years old, he provided neither school records nor medical records to substantiate such claim. He also failed to provide any evidence from or about any responsible adult or guardian to indicate the circumstances of how he survived during his childhood and throughout the requisite period. It is also noted that the affiants fail to recognize that the applicant was a young child when he allegedly arrived in the United States, and they also fail to mention a parent or guardian who should have been responsible for him during that time.

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 conflicting statements and 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.