

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

[REDACTED]

41

FILE: [REDACTED]
MSC 05 336 10524

Office: NEW YORK

Date: **MAY 27 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:

[REDACTED]

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, New York, and 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, counsel summarizes the documents submitted by the applicant in support of his residency claim and asserts that the applicant met his burden of proof.

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 until the date of filing the application. 8 C.F.R. § 245a.2(b)(1).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the alien 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.* 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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided in the United States during the requisite time period. Here, the applicant has failed to meet this burden.

In support of the claim that he resided in the United States continuously throughout the entire statutory period, the applicant provided the following:

1. An affidavit dated August 10, 2005 from [REDACTED] who stated that the applicant resided with him at [REDACTED] Bronx, New York from April 1987 until December 2000. The affiant claimed that the applicant contributed towards the payment of rent and other household expenses. It is noted that in April 1987 the applicant was only thirteen years old and still of school age. The applicant has not claimed nor submitted documentation suggesting that he was employed at such a young age. It is therefore unclear how the applicant was able to afford any living expenses at all. Additionally, despite claiming that he lived with the applicant for over thirteen years, the affiant provided no detailed information about any events in the applicant's life during their claimed 13-year period of cohabitation, specifically, the period from April 1987 through May 4, 1988. Based on the deficiencies discussed above, this affiant's statements are found to be lacking in probative value and, therefore, will be afforded only minimal weight as evidence of the applicant's residence in the United States during the statutory period.
2. An affidavit dated August 25, 2005 from [REDACTED] who claimed to have known the applicant since April 1987 when the applicant resided at 3 [REDACTED] or [REDACTED] Bronx, New York. It is noted that the street address on the affidavit appears to have been altered to show from 3 [REDACTED] to [REDACTED]. However, it is unclear whether the change was made by the affiant or some other third party. The affiant also claimed that he met the applicant at community functions and social gatherings and further stated that he and the applicant attended prayer services at a mosque, which the affiant did not specifically name. The

affiant failed to provide any specific details about the applicant during his purported residence in the United States within the statutory period. Accordingly, this affiant's statement will only be afforded minimal weight as corroborating evidence.

On November 15, 2005, the director issued a Notice of Intent to Deny (NOID) informing the applicant that he failed to submit sufficient credible evidence to support his claim that he had resided in the United States continuously throughout the statutory period.

In response, the applicant provided affidavits from [REDACTED] dated November 25, 2005; [REDACTED] dated November 29, 2005; and [REDACTED] dated November 22, 2005. All three affiants claimed to have known the applicant since December 1981. Mr. [REDACTED] specified the applicant's purported residences in the United States since December 1981, claiming that the applicant resided at [REDACTED] Bronx, New York from December 1981 until March 1999. Although this affiant further claimed that he met the applicant at various community and social gatherings as well as religious services, he failed to specify any social gatherings or religious institutions and provided no other details about the events and circumstances of the applicant's life in the United States during the statutory period.

Additionally, [REDACTED] statement of the applicant's residence from December 1981 through March 1999 is inconsistent with information provided earlier by the affiants in Nos. 1 and 2 above, as well as Mr. [REDACTED] own statement, all of which stated that the applicant resided at [REDACTED] from April 1987 through December 2000. [REDACTED] affidavit is also inconsistent with that of [REDACTED] who stated that the applicant only lived at [REDACTED], Bronx, New York until March 1987. Neither [REDACTED] nor [REDACTED] provided any detailed information about the events and circumstances of the applicant's life in the United States during the statutory period. Accordingly, all three affidavits submitted in response to the NOID lack probative value and, therefore, will only be afforded minimal weight as evidence of the applicant's residence in the United States during the relevant time.

On November 9, 2006, the director denied the application, concluding that the documentation the applicant submitted in support of claimed residence in the United States during the statutory period was insufficient.¹

On appeal, counsel asserts that the director's denial was erroneous and that the affidavits submitted by the applicant corroborate his claim of residence in the United States during the statutory period. However, without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Contrary to counsel's assertion, the AAO has provided a detailed analysis explaining the significant deficiencies in all five of the affidavits provided in

¹ The director also made various adverse findings regarding the applicant's interview testimony. However, the AAO finds that the record lacks sufficient information about the applicant's specific responses. As such, the AAO's decision will be based on the documentation submitted by the applicant and the information provided by the applicant in his Form I-687 application.

support of the applicant's claim. Neither the applicant nor the affiants whose statements have been submitted to corroborate the applicant's residence claim address the fact that the applicant was only seven years old when three of the affiants claimed to have met him. There is no indication how the applicant cared for himself at such a young age and with whom he resided when his purported residence commenced in December 1981. There are no documents, such as school or immunization records, suggesting that the applicant attended school during the time period when he should have attended school.

Additionally, the applicant's history of residences in the United States as provided in No. 30 of the Form I-687 only lists addresses commencing in April 1987. Despite the claims of [REDACTED], and Mr. [REDACTED], all of whom claimed that the applicant had resided in the United States since December 1981 and two of whom actually provided addresses where they claimed the applicant had resided during the relevant time period, the applicant himself did not provide any residential address to specify where he had purportedly resided from December 1981 through March 1987. The applicant also did not identify any affiliations with any religious institutions, even though three out of five affiants claimed that they attended prayer services with the applicant during the relevant statutory period.

In summary, the applicant's entire claim of unlawful residence in the United States during the statutory time period rests on deficient affidavits, several of which are inconsistent with one another and with information provided by the applicant in his own Form I-687. 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. 582, 591-92 (BIA 1988).

The absence of sufficiently detailed supporting 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 dubious circumstances in the matter of this applicant, i.e., his young age and no presence of either parent, as well as the applicant's reliance upon documents with minimal probative value, 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-*, 20 I&N Dec. 77. 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.