



U.S. Citizenship  
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[REDACTED]

FILE:

[REDACTED]

Office: NEW YORK

Date:

**MAY 30 2008**

MSC 06 063 12976

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*  
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. 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 her 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 that he has established his unlawful residence for the requisite time period, that he is qualified under Section 245A of the Act and the CSS/NEWMAN settlement agreements, and that his application for temporary resident status should be granted.

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 245(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. 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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided in the United States for the duration of the requisite period. Here, the applicant submitted the following evidence: Sworn Affidavits - [REDACTED] (two affidavits); [REDACTED]; and [REDACTED]

[REDACTED] the applicant’s sworn statement; copies of various receipts, lease agreements, medical information and employment information covering the time period if 1985 – 2006; envelopes addressed to the applicant at New York addresses, and photographs of the applicant in various social settings. For the reasons hereinafter discussed, the evidence does not establish the applicant’s unlawful presence in the United States during the requisite time period. The applicant has failed to meet his burden of proof.

Affidavits

- [REDACTED]  
Mr. [REDACTED] submitted two sworn statements (September 16, 2006 and August 12, 2006). The affidavits state that the applicant entered the United States in September of 1981. Mr. [REDACTED] states that the applicant was his roommate at [REDACTED] Flushing, NY until November of 1984, and that the applicant attempted to legalize through the amnesty program.

- [REDACTED] September 18, 2006

The affiant states that he is aware that the applicant entered the United States in September of 1981. The affiant further states that the applicant resided with the affiant at [REDACTED] Flushing, NY as his roommate until November of 1984, and that the applicant attempted to legalize through the amnesty program.

- [REDACTED] - September 16, 2006

The affiant states that he is aware that the applicant entered the United States in September of 1981. The affiant further states that the applicant resided with the affiant at [REDACTED] Flushing, NY as his roommate until November of 1984, and that the applicant attempted to legalize through the amnesty program.

- [REDACTED] - April 25, 2006

The affiant states that he is a self-employed electrician, a citizen of the United States, that he has personally been acquainted with the applicant, and that he has personal knowledge that the applicant has resided in the United States from September of 1981 until the date of the affidavit. The affiant states that in September of 1981 he met the applicant at a party at the house of a friend.

- [REDACTED] - April 25, 2006

The affiant states that he is a self-employed electrician, a citizen of the United States, that he has personally been acquainted with the applicant, and that he has personal knowledge that the applicant has resided in the United States from September of 1981 until the date of the affidavit. The affiant states that the applicant is a good friend of his wife, a native of Paraguay, and that his friendship with the applicant began in September of 1981.

- [REDACTED] - April 25, 2006

The affiant states that she is a self-employed housekeeper, a citizen of the United States, and that she has personal knowledge that the applicant resided in the United States from September of 1981 until the date of the affidavit. The affiant states that she met the applicant at the home of a friend in September of 1981.

- [REDACTED] - April 26, 2006

The affiant states that he is a United States citizen and that he has personally known the applicant since September of 1981 when he met him at a social event. The affiant provided a copy of an identification card indicating that he is a New York Police Department detective.

Applicant's Sworn Statement

- The applicant provided a sworn statement whereby he indicates that he entered the United States without inspection in September of 1981 traveling from Mexico to California. He states that he applied for amnesty on December 2, 2005 by filing the Form I-687, and that he cannot provide a copy of his passport attesting to his trip through Mexico because he lost the passport. The applicant states that the only proof of residence that he has for his presence in the United States from 1981 – 1984 are the affidavits of acquaintances. The applicant states that he left the country in July of 1987 to return to Paraguay due to a family emergency, and that he returned to the United States, without inspection, in August of 1987. The applicant states that in August of 1987 he “heard the amnesty was on,” and that he prepared his application through a notary and attempted to file it in New York in September of 1987, but the application was rejected because he had left the country from July to August of 1987.

### Employment Letters

- The applicant submitted an employment letter dated April 25, 2006 from PT Plastering. [REDACTED], the owner of the business, states, under oath, that the applicant was employed by him as a painter and plasterer (intermittently, – two to three days per week) from September of 1981 until November of 1981.
- The applicant submitted an employment letter from [REDACTED] Construction Corp, signed under oath by [REDACTED] on April 26, 2006. Mr. [REDACTED] states that the applicant was employed by his company as a construction helper from January of 2005 until April of 2006.

The applicant submitted an employment letter from L.I. Construction, Inc., signed under oath by [REDACTED] on April 26, 2006. Mr. [REDACTED] states that the applicant was employed by him as a construction helper from 2000 – 2004.

Mr. [REDACTED] indicates in the above referenced employment letters that both LUCHO Construction and L.I. Construction are his companies. Each company reports, on the copied letterhead, a different address and telephone number.

Pursuant to 8 C.F.R. § 245a.2(d)(3)(i), letters from employers should be on employer letterhead stationery. None of the letters of employment are on original company letterhead stationery. In addition, none of the employment letters provided the applicant’s current address of residence, and they failed to provide the applicant’s address at the time of employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulations, the affiants also failed to declare whether the information was taken from company records, and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable. Accordingly, while relevant, these employer letters have little evidentiary weight and probative value.

### Other Evidence Presented

- The applicant presented numerous receipts and other documentary evidence establishing his presence in the United States from 1985 through 2006.
- The applicant provided several envelopes addressed to him from his native country. Only one postmark, however, is legible. The postmark is "DIC. 1981." The applicant has provided no other verifiable physical evidence of his presence in the United States prior to 1982. The applicant also submitted numerous pictures of him in various social settings. The photographs, however, bear no dates or other identifying information to establish where and/or when the photographs were taken. The envelopes and photographs are of little evidentiary value.

Although the applicant has submitted several affidavits and his sworn statement in support of his application, the applicant has not provided any contemporaneous evidence of residence in the United States during the duration of the requisite period. While the applicant was able to submit receipts, medical records, apartment leases, etc. to establish his residence in the United States subsequent to 1984, he could only provide acquaintance statements to establish his residence prior to 1985. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. Although not required, neither the applicant's statement nor any of the affidavits included any supporting documentation of the affiant's presence in the United States prior to 1985 (during the requisite period). For example, such documentation could include, but is not limited to, copies of: medical records; school records; real estate/lease documentation; telephone bills; dated purchase receipts; and bank statements. The affidavits do not provide sufficient detail of the affiant's relationship with the applicant to establish his physical presence in this country in an unlawful status for the duration of the requisite time frame. 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 his claim. Pursuant to 8 C.F.R. § 245a.12(e), 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, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States during the requisite period.

It should further be noted that the director stated in her denial of the applicant's claim that the applicant stated that he traveled to Paraguay from July to August of 1987, and that his application was rejected in September of 1987 because of this travel (See the applicant's sworn statement dated August 14, 2006). During the applicant's legalization interview the applicant stated under oath, and the interviewer's notes reflect, that the applicant's application was rejected in January of 1986, and that he left the country on two occasions during the requisite period (10/84 – 11/84; and 7/87 – 8/87). The applicant has offered no explanation for this discrepancy. 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 will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Therefore, based on the above, the applicant has failed to establish by a preponderance of the evidence that he has continuously resided in an unlawful status in the United States for the requisite period 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.