

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

L1



FILE: [REDACTED]
MSC-06-032-11621

Office: DETROIT

Date: **NOV 05 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:



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 Director, Detroit. 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, counsel asserts that the decision is wrong because sufficient evidence was furnished to show that the applicant was present in the United States from January 1, 1982 to present. Counsel states that the applicant's father indicated in his statement that they resided in the United States from March 1981 to June 1991 in New York City. Counsel states that the applicant's neighbor indicated in his statement that he grew up with the applicant and the applicant's mother was his first babysitter. Counsel states that the decision is deficient because it is a general denial.

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. 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 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 November 1, 2005. At part #30 of the Form I-687 application where applicants are asked to list all residences in the United States since first entry, the applicant showed his first address in the United States to be in New York, New York from May 1981 to 1991. At part #33, he showed his first employment in the United States to be as a self-employed vendor in New York, New York from 1985 to January 1999.

On November 28, 2005, the director, National Benefits Center, issued a Notice of Intent to Deny (NOID) to the applicant. The NOID states that the applicant failed to submit documentation to establish his eligibility for temporary resident status. The applicant was afforded thirty 30 days to provide additional evidence in response to the NOID.

Pursuant to 8 C.F.R. § 245a.2(d)(6), to meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documentation that may be furnished 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. The applicant failed to submit any of these documents in support of his claim of continuous residence in the United States.

An applicant may also submit “any other relevant document.” 8 C.F.R. § 245a.2(d)(3)(vi)(L). In response to the NOID, the applicant furnished an affidavit from his mother, [REDACTED] who resides in Niger. The affidavit, written in French, has attached to it a certified English translation. Ms. [REDACTED] states in her affidavit that she resided in the United States with the applicant from March 1981 to June 1991 at [REDACTED], New York, New York. She states that she tried to apply under Section 245A of the Act, but her request was denied. She states that she had to return to Niger in 1984 at the time of her husband’s death. This affidavit lacks considerable detail on the applicant’s residence in the United States. The affidavit fails to describe how the applicant and his mother first entered the United States in 1981. It also fails to describe where they resided during the requisite period. Furthermore, it does not indicate how they supported themselves, and whether the applicant attended school. Given the lack of detail, this affidavit is of little probative value as evidence of the applicant’s residence in the United States during the requisite period.

The applicant also furnished a fill-in-the blank form entitled “CSS/LULAC Legalization and Life Act Adjustment Form to Gather Information for Third Party Declarations.” The instructions on the form request the applicant to “Fill in information below about the person who will sign the declaration for the applicant.” The applicant furnished a completed form on behalf of [REDACTED] with a copy of his Indiana Birth Certificate and Social Security Card. The form states that [REDACTED] first met the applicant in December 1981. It states that [REDACTED] resided in the same building as the applicant, [REDACTED] New York, New York. It states that during the requisite period the applicant’s mother was [REDACTED]’ babysitter and he saw the applicant every day. Although this form offers some detail on [REDACTED] relationship with the applicant during the requisite eriod, it does not bear [REDACTED] signature. Moreover, the form shows [REDACTED] date of birth as December 19, 1980, indicating that he was a one year old infant on the date that he purportedly first met the applicant. The form fails to convey how [REDACTED] dated his initial contact with the applicant. It also does not explain how [REDACTED] was able to recall details of their relationship during the requisite period. Given these deficiencies, this form is without any probative value as evidence of the applicant’s residence in the United States during the requisite period.

On February 12, 2007, the director issued a Notice of Decision to deny the application. The director determined that the applicant failed to provide sufficient evidence to overturn the intent to deny. The director concluded that the applicant failed to meet his burden of proof in the proceeding.

On appeal, counsel asserts that the decision is wrong because sufficient evidence was furnished to show that the applicant was present in the United States from January 1, 1982 to present. Counsel states that the applicant's father indicated in his statement that they resided in the United States from March 1981 to June 1991 in New York City. Counsel states that the applicant's neighbor indicated in his statement that he grew up with the applicant and the applicant's mother was his first babysitter. Counsel states that the decision is deficient because it is a general denial.

As additional corroborating evidence counsel submits a letter from [REDACTED] of The Muslim Center, located in Detroit, Michigan. Mr. [REDACTED] states in his letter that he first saw the applicant at Friday prayers in 1981. He states that he has since seen the applicant off and on at the mosque. This letter is dated September 4, 2007, nearly 26 years after the date [REDACTED] purportedly first came into contact with the applicant. The letter fails to indicate how [REDACTED] dated his initial acquaintance with the applicant. Additionally, the applicant failed to show his affiliation or membership with The Muslim Center on his Form I-687. At part #31 of the application, where applicants are asked to list their affiliations with religious organizations, the applicant responded "N/A" (not applicable). Finally, the regulation at 8 C.F.R. § 245a.2(d)(3)(v) provides that attestations from religious organizations should state the address where the applicant resided during the membership period. This letter fails to provide such information. Given these deficiencies, this letter is without any probative value as evidence of the applicant's residence in the United States during the requisite period.

In this case, the absence of credible and probative 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.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 lack of credible supporting documentation, it is concluded that he 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.