

**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 20529-2090  
MAIL STOP 2090



**U.S. Citizenship  
and Immigration  
Services**

**PUBLIC COPY**

**L1**



FILE:   
MSC-05-183-10046

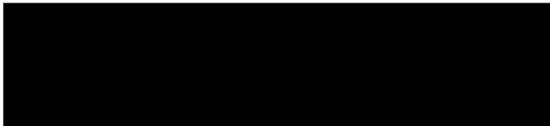
Office: LOS ANGELES

Date: NOV 19 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:



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 "John F. Grissom".

John F. Grissom, Acting 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 of the Los Angeles office. 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 denied the application, finding 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.

On appeal, the applicant requests that the denial of his application be reversed, since he will submit additional evidence that he resided in the United States during the requisite period. The applicant provides additional evidence on appeal.

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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

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 (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the requisite period of time.

The record shows that the applicant submitted a Form I-687 Application for Status as a Temporary Resident to Citizenship and Immigration Services (CIS) on April 1, 2005. At part #30 where applicants were asked to list all residences in the United States since first entry, the applicant listed the following addresses: [REDACTED] California from 1982 to 1984; [REDACTED] during 1985; [REDACTED] California during 1985; [REDACTED], California from 1986 to 1987; [REDACTED], California during 1987; and [REDACTED] California from 1988 to May 1989. At part #31 where applicants were asked to list all affiliations or associations, clubs, organizations, churches, unions, businesses, et cetera, the applicant stated “None.” At part #33 where applicants were asked to list all employment in the United States since entry, the applicant listed the following positions: Utility worker for Mexico Restaurant from 1981 to 1985; labor for Mallin Co. from 1981 to 1984; labor for Golden Peanut Co. from October 1985 to July 1987; unemployed from August 1987 to December 1987; and labor for [REDACTED] Manufacturing Co. from 1988 to May 1990.

The documentation that the applicant submits in support of his claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of declarations of relationship written by friends and family, declarations confirming employment or church activity, and postmarked envelopes. The AAO has reviewed each document in its entirety to

determine the applicant's eligibility. When taken as a whole, these documents fail to establish the applicant's continuous unlawful residence in the United States for the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality; an applicant must provide evidence of eligibility apart from his or her own testimony; and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility.

It is noted that the applicant submitted substantial documentation related to [REDACTED] a name that the applicant listed as his alias on the Form I-687 application. The applicant has failed to provide evidence outside of his own statements to substantiate his claim that he used the name [REDACTED]. Therefore, the documents related to this name are not directly relevant to the question of whether the applicant has established that he resided in the United States throughout the requisite period.

The applicant provided envelopes listing his name as the sender, with post mark dates falling within the requisite period. These include envelopes postmarked with dates in March, May and July 1987. The applicant also provided an envelope with a return address that is inconsistent with the information provided on the applicant's Form I-687. This inconsistency casts doubt on the authenticity of the other envelopes, as well as the applicant's claim to have resided in the United States throughout the requisite period. The applicant also provided an envelope with a post mark that is illegible. This envelope will be given no weight in determining whether the applicant has established that he resided in the United States during the requisite period.

The applicant provided declarations from [REDACTED] dated August 26, 2004 and March 25, 2007, [REDACTED] and [REDACTED]. These declarations each fail to state that the applicant resided in the United States during the requisite period. Therefore, these declarations will be given only nominal weight in determining whether the applicant has established that he resided in the United States during the requisite period.

The applicant provided an affidavit from [REDACTED] which states that the affiant has been acquainted with the applicant since 1981, and that they both worked for Mallin Co. from October 1981 through August 1984. The affiant stated that he was the applicant's supervisor in the production department. The affidavit does not conform to regulatory standards for letters from employers as stated in 8 C.F.R. § 245a.2(d)(3)(i). Specifically, the affidavit does not include the applicant's address at the time of employment, duties with the company, whether or not the information was taken from official company records, where the records are located, and whether CIS may have access to the records. Despite these limitations, this affidavit constitutes some evidence that the applicant resided in the United States during the requisite period.

The affidavit from [REDACTED] states that the affiant has been acquainted with the applicant in the United States since December 1981 when the applicant worked for the affiant at Restaurant Mexico as a part-time utility worker. The affiant stated that he lived at the [REDACTED] address and the [REDACTED] address from January 1982 through

December 1984. The affiant stated that he became good friends with the applicant and they saw each other “in different places” at least once per week. This is inconsistent with the applicant’s Form I-687 where he failed to indicate that he had resided at the [REDACTED]. This inconsistency casts some doubt on the affiant’s ability to confirm that the applicant resided in the United States during the requisite period.

The declaration from [REDACTED] “lead men,” states that the declarant has known the applicant since they worked together at Mallin Co., where the applicant started in October 1981. The declarant also stated that the applicant has donated countless hours to improving his community, through his church activities. This information is inconsistent with the applicant’s Form I-687, where he failed to list his church membership when asked to list all affiliations or associations with churches. This inconsistency casts some doubt on the declarant’s claimed knowledge of the applicant’s activities. This declaration also lacks detail regarding the nature and frequency of the declarant’s contact with the applicant during the requisite period. Lastly, the declaration fails to specifically confirm that the applicant resided in the United States during the requisite period, other than in October 1981. Considering these deficiencies, the declaration will be given only nominal weight in determining whether the applicant has established that he resided in the United States during the requisite period.

The applicant provided two attestations from [REDACTED] including one dated March 25, 2007 and one that is undated. The undated declaration states that the applicant lived in the declarant’s house in 1982, and lists the declarant’s address as the [REDACTED]. This declaration is inconsistent with the applicant’s Form I-687, which states that the applicant lived at the [REDACTED] from 1982 to 1984, rather than simply in 1982. This declaration also lacks detail regarding when, where and how the declarant met the applicant. The affidavit dated March 25, 2007 states that the affiant has known the applicant from 1982 to present, and that the applicant lived in the affiant’s house in 1982. The affiant stated that, later, the applicant moved but she has kept in touch with him since then. This affidavit lacks detail regarding how the affiant met the applicant, how they came to be living together, and how long they lived together. Considering these limitations, these attestations will be given only nominal weight in determining whether the applicant has established that he resided in the United States during the requisite period.

The declaration from [REDACTED] of the Church of the Resurrection states that the applicant has lived in the area of the church’s parish since 1981. The declarant stated that he has been a pastor at the church since 1983 and the applicant was already living there. This declaration indicates that the declarant lacks personal knowledge of the applicant’s residence in the United States prior to 1983. It is also inconsistent with the information on the Form I-687, where the applicant failed to indicate that he was associated with the church, when asked to list all affiliations or associations. Lastly, the declaration does not conform to regulatory standards for attestations by churches, unions, or other organizations as stated in 8 C.F.R. § 245a.2(d)(3)(v). Specifically, the declaration does not show inclusive dates of membership, does not state the address where the applicant resided during the membership

period, and does not establish the origin of the information being attested to. Due to these limitations, the declaration will be given only nominal weight in determining whether the applicant has established that he resided in the United States during the requisite period.

The affidavit from [REDACTED] states that the affiant has known the applicant since 1981. They met because the applicant worked for the affiant cleaning the gardens of her properties in Bell, California from 1981 to 1988. This is inconsistent with the information provided on the Form I-687, where the applicant failed to list any employment cleaning gardens. This inconsistency casts doubt on the affiant's ability to confirm the applicant's residence throughout the requisite period.

The inconsistencies noted above are material to the applicant's claim in that they have a direct bearing on the applicant's residence in the United States during the requisite period. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The other documents provided by the applicant are insufficient to overcome the noted inconsistencies.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and 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.