

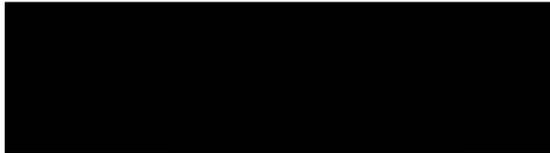
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
MSC-05-197-11683

Office: DALLAS

Date: OCT 09 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. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

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, Dallas. 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. On January 27, 2006, the director issued a Notice of Intent to Deny (NOID). The director noted in the NOID that the applicant had testified before an immigration officer that he first entered the United States on January 1, 1986. The director also noted that, in his Form I-687 application, the applicant did not provide any U.S. addresses prior to January 1987 and did not provide any employment history prior to January 1988. The director therefore found that the applicant had failed to satisfy his burden of proof in establishing his eligibility for temporary resident status. The applicant was provided with thirty days in which to respond to the NOID. The applicant submitted a number of written statements in response to the NOID. On February 21, 2007, the director denied the application, finding that the evidence submitted by the applicant was insufficient to overcome the grounds set forth in the NOID.

On appeal, counsel states that the applicant has met his burden of proof and that the director ignored the evidence that the applicant submitted in response to the NOID. The applicant has submitted additional affidavits and copies of receipts from the requisite period.

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)(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) 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).

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 applicant 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 has not met his burden of proof.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on April 15, 2005. At part #30 of the application, where applicants were asked to list all residences in the United States since first entry, the first period of residence listed by the applicant began in January of 1987. At part #33 of the application, where applicants were asked to list all employment in the United States since January 1, 1982, the first period of employment began in January of 1988. Further, as noted by the director, the applicant testified before an immigration officer on January 26, 2006 that he first entered the United States on January 1, 1986. The applicant’s responses on the Form I-687 application and his statements to the immigration officer tend to indicate that the applicant has not resided in the United States throughout the requisite period.

The record also contains a Form I-687 application submitted by the applicant in 1990. In this earlier Form I-687 application, the applicant indicated that he had been employed by [REDACTED] as a farm worker from January 1981 until “present.” The record also contains an affidavit from [REDACTED], dated June 18 1990, in which the affiant states that the applicant worked on his ranch from January 1, 1981 until May 30, 1990. The applicant did not list this employment on the instant Form I-687 application. This is a material inconsistency which detracts from the credibility of the applicant’s claims.

There is a second affidavit from [REDACTED], also dated June 18, 1990, in which the affiant states that the applicant "lived in my trailer house that is located on my ranch" from January 1, 1981 until May 30, 1990. [REDACTED] listed his contact address as [REDACTED], Dunn, North Carolina, 28334. The applicant listed this same address as his mailing address on the Form I-687 application that he submitted in 1990. However, on the instant Form I-687 application, the applicant did not indicate that he ever lived or worked in North Carolina at any point during the requisite period. This is a material inconsistency which detracts from the credibility of the applicant's claim.

The applicant submitted the following in support of his application:

- A letter from [REDACTED] of The Upstairs Gallery. The letter states that the applicant has worked on a part-time basis for The Upstairs Gallery since 1982. The applicant did not list any such employment on either the instant Form I-687 application or the Form I-687 application submitted in 1990. Instead, as noted above, the applicant listed employment with [REDACTED] on his previously submitted Form I-687 application. This is a material inconsistency which detracts from the credibility of this letter. Further, even assuming that the information in the letter is true, it does not establish that the applicant continuously resided in the United States during the requisite period. As noted by the director, [REDACTED] stated that the applicant worked on projects that took one or two days to complete, as well as some longer projects that took two or three weeks to complete. It is not clear how frequently the applicant worked on such projects. Therefore, the frequency of [REDACTED] alleged contact with the applicant during the requisite period has not been established. Given these deficiencies, this letter will be given minimal weight as evidence of the applicant's residence in the United States during the requisite period.
- A letter from [REDACTED] of [REDACTED] Paint Service. The letter states that the applicant worked on and off for [REDACTED] Paint Services from January 1986 until December 1989. The director contacted [REDACTED] on February 1, 2007. [REDACTED] stated that the applicant had been employed by him for approximately one year, and that that employment had terminated approximately eighteen months prior to the time that Mr. [REDACTED] was contacted by the Service. This, obviously, conflicts with the information in the written statement where [REDACTED] stated that the applicant worked for him beginning in 1986. However, even if the information in this letter is assumed to be true, it is consistent with the applicant's testimony that he first entered the United States in January of 1986 and therefore fails to establish that the applicant has resided in the United States throughout the requisite period. Given these deficiencies, this letter has little probative value and will be given minimal weight as evidence of the applicant's residence in the United States during the requisite period.
- A letter from [REDACTED] dated February 24, 2006. The letter states that the applicant resided with [REDACTED] at the [REDACTED], Arlington, Texas from January 1, 1986 until December 12, 1987. The applicant did not list this address in either the instant Form I-687 application or the Form I-687 application

submitted in 1990. Even if the information in this letter is assumed to be true, it is consistent with the applicant's testimony that he first entered the United States in January of 1986 and therefore fails to establish that the applicant has resided in the United States throughout the requisite period. Given these deficiencies, this letter has little probative value and will be given minimal weight as evidence of the applicant's residence in the United States during the requisite period.

The applicant has submitted the following in support of his appeal:

- An affidavit from [REDACTED] dated March 18, 2007. The affiant states that he met the applicant at work in 1981. This affidavit lacks probative details such as where either the applicant or affiant were working at the time they met. The affiant also fails to provide details regarding the nature and frequency of his contact with the applicant during the requisite period. Finally, this affidavit conflicts with the applicant's sworn testimony that he first entered the United States in January of 1986. Given these deficiencies, this affidavit will be given minimal weight as evidence of the applicant's residence in the United States during the requisite period.
- An affidavit from [REDACTED] dated March 17, 2007. The affiant states that he met the applicant in 1982, when they were neighbors in Arlington, Texas. The affiant states that he and the applicant are members of the same church and that they see each other frequently. This affidavit lacks probative details such as how the affiant came to know the applicant or how he dates his initial acquaintance with the applicant. The affiant also fails to provide details regarding the nature and frequency of his contact with the applicant during the requisite period. Given these deficiencies, this affidavit will be given only minimal weight as evidence of the applicant's residence in the United States during the requisite period.
- A letter from [REDACTED] dated March 19, 2007. The declarant states that she has known the applicant since 1986, when she worked at a restaurant where the applicant frequently bought his lunch. The declarant also states that she has knowledge that the applicant has resided in the United States continuously since that time because she sees him around the neighborhood. This letter is consistent with the applicant's testimony that he first entered the United States in January of 1986. However, the letter is not probative of whether the applicant resided in the United States prior to 1986.
- Photocopies of two receipts from [REDACTED] which bear the applicant's last name and are dated January 1, 1986 and March 1, 1986. It is noted that the name and date are hand written on these receipts, thus it is not possible to verify their authenticity. It is further noted that the applicant did not list his residence at the [REDACTED] on either of his Form I-687 applications. Further, even assuming that these documents are authentic, they are consistent with the applicant's testimony that he first entered the United States in January of 1986. They are not probative of the applicant's residence in the United States prior to 1986.

In summary, the applicant has not provided sufficient evidence in support of his claim of residence in the United States relating to the entire requisite period. 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 contradictory information in the record and the applicant's reliance upon documents with little or no 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.