

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-06-083-10657

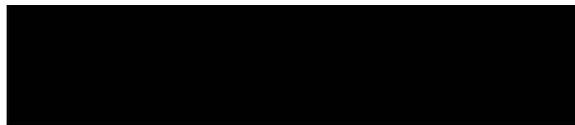
Office: HOUSTON

Date: OCT 24 2008

IN RE: Applicant: [Redacted]

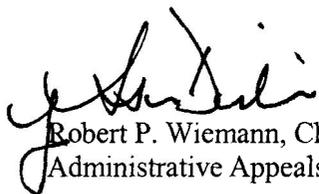
APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

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.


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, Houston. The decision is now before the Administrative Appeals Office 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, 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 noted that the applicant had failed to submit any verifiable proof of his entry into the United States prior to January 1, 1982 or of his continuous unlawful residence throughout the requisite period. The director denied the application finding that the applicant had not met his burden of proof and that he 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 director wrongfully denied the applicant's Form I-687 application because he lacked evidence and because the applicant confused dates during his immigration interview. Counsel further asserts that the applicant has provided as much evidence as he could obtain and that he should not be expected to provide documentation where he was a young man who had no status, no permanent housing, no stable employment, and no proof of education. The applicant provides on appeal, copies of documents already submitted as evidence.

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. See CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

An alien shall be regarded as having resided continuously in the United States if at the time of filing an application for temporary resident status, no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, through the date the application is filed, unless the alien can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the alien was maintaining residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.2(h)(1).

If the applicant's absence exceeded the 45-day period allowed for a single absence, it must be determined if the untimely return of the applicant to the United States was due to an "emergent reason." Although this term is not defined in the regulations, *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), holds that emergent means "coming unexpectedly into being."

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 of proceeding shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS), on December 22, 2005. The applicant indicated at part #20 of the Form I-687 application where it asks the applicant to indicate his mother and father's name and whether they are alive or deceased, that his father [REDACTED] died in 1970.

The applicant submitted as evidence, copies of photographs and post cards where he has handwritten in the dates. The evidence cannot be used to establish the applicant's eligibility for temporary residence status in that the dates are not authentic or verifiable.

The applicant submitted a sworn affidavit in which he stated that he came to the United States with his parents, [REDACTED] and [REDACTED] on April 5, 1981. He also stated that his family initially settled in Oxnard, California and that he and his father were farm laborers on the [REDACTED] where they mainly grew fruit and vegetables. He further stated that he and his parents moved to Texas between 1985 and 1986, and that his parents applied for amnesty at the [REDACTED] office at that time.

Contrary to the applicant's sworn statement, he indicated on his Form I-687 application at part #20 that his father died in 1970. It is also noted that the applicant indicated on his Form I-687 application that he resided in Oxnard, California from 1981 to 1989 and lived in Houston, Texas from 1990 to 2005. It is further noted that [REDACTED] stated in his affidavit that the applicant was one of ten children and that the applicant's father died at an early age, that the applicant was sent to live with his grandparents where he ran away at the age of ten, and that the applicant arrived in the United States in 1989. Here, the applicant's statements are contradictory to one another and are inconsistent with statements made by [REDACTED]. This inconsistency calls into question the credibility of the applicant's statement. 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. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the discrepancies.

The applicant submitted the following attestations as evidence:

- An affidavit dated December 12, 2005 from [REDACTED] in which he stated that the applicant came to the United States in 1989 and that he has known him since 1994 when he employed him as a day laborer. The affiant's statement is inconsistent with what the applicant stated on his Form I-687 at part #16 where he indicated that he last came to the [REDACTED]

United States in April of 1981. 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. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

- An undated letter from [REDACTED] in which he stated that the applicant is a good person and a hard worker and that because of his non-status he has worked for cash and has never had anything in his name. The declarant also stated that the applicant started by working as a farm laborer in California and has since relocated to Texas where he has been employed as a day laborer. Here, the declaration is lacking in detail, and therefore, can be afforded little weight in establishing the applicant's presence in the United States during the requisite period.
- A letter dated November 12, 2006 from [REDACTED] and [REDACTED] in which they stated that the applicant has lived and worked in the United States for many years, and that he is an honest and hardworking person. Here, the declarants fail to indicate when they met the applicant, under what circumstances they met the applicant, the frequency with which they saw and communicated with the applicant, or any other detail that would lend credence to their claimed knowledge of the applicant and the applicant's residence in the United States during the requisite period. Because the declaration is significantly lacking in detail, it can be afforded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

An affidavit dated November 9, 2006 from [REDACTED] of San Francisco, California in which he stated that he has known the applicant since 1986. He also stated that he and the applicant met in San Francisco through a mutual friend and that the applicant resided in the San Francisco area from 1986 to 1987. This statement is inconsistent with what the applicant stated on his Form I-687 at part #30 where he noted that he lived in Oxnard, California from 1981 to 1989. Here, the applicant never states that he resided in San Francisco. Given this discrepancy, the affidavit can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

In denying the application the director noted that the applicant had failed to submit verifiable proof of his entry into the United States and his continuous unlawful residence during the requisite period.

On appeal, counsel asserts that the applicant has been present in the United States since 1981, and that based upon the passage of time, it is difficult for the applicant to obtain additional evidence.

The applicant resubmitted on appeal the attestations from [REDACTED] and [REDACTED] and [REDACTED]. He also resubmits copies of the photographs and post cards. The applicant submitted another undated letter from [REDACTED] in which he states that the applicant is one of

ten children and that his father died at an early age. He further states that the applicant's mother was unable to care for all ten children and sent the applicant to live with his grandparents. The declarant states that the applicant ran away from his grandparents at the age of ten. The declarant also states that the applicant began picking fruit in California in the early 80s and has maintained various construction jobs since coming to Texas in the early 90s. These statements are inconsistent with what the applicant stated on his Form I-687 application and his sworn statements made in his affidavit. 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. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In the instant case, the applicant has failed to provide sufficient, credible and probative evidence to establish his continuous unlawful residence in the United States throughout the requisite period. He has failed to overcome the issues raised by the director. Although counsel asserts that the applicant has provided as much evidence as he can obtain, it is insufficient to establish the applicant's eligibility for temporary resident status. Therefore, it cannot be concluded that the applicant resided continuously in the United States for the requisite period.

Although the applicant claims to have resided in the United States since he was 15 years old, he provided neither school records nor medical records to substantiate such claim. He also failed to provide any independent documentary evidence from or about any responsible adult or guardian to indicate the circumstances under which he survived in the United States during his childhood and throughout the requisite period. The attestations submitted are either not credible or are lacking in detail and therefore, can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

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 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 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 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.