

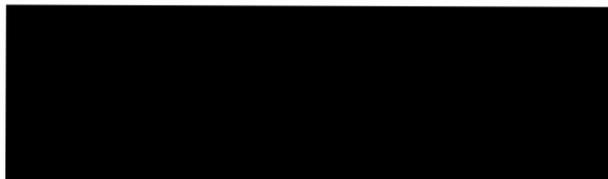
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U.S. Citizenship
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FILE:

MSC-05-244-12729

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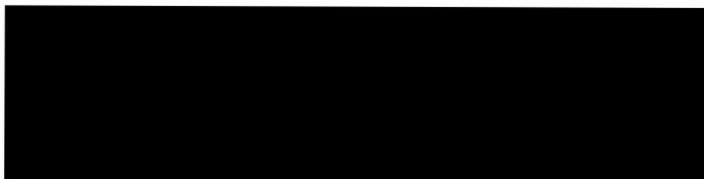
IN RE:

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.

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, and 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 (Act), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet. The director determined that the applicant had not provided sufficient evidence to establish that he entered the United States before January 1, 1982, and resided in a continuous unlawful status throughout the requisite period. The director denied the application as 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, the applicant asserts that the director erred in rendering the decision in his case, and that he has submitted sufficient evidence to establish his eligibility for temporary resident status.

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 (attempt) 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).

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 June 1, 2005.

In the decision dated September 6, 2006, the director noted that the affidavits submitted by the applicant were not credible or amenable to verification, and that the applicant failed to submit any evidence in response to the Notice of Intent to Deny (NOID). The director determined that the denial of the application was based upon the reasons stated in the NOID dated March 10, 2006. In the NOID the director stated that the record of proceeding contained multiple discrepancies, inconsistencies and contradictions regarding the applicant's date of entry into the United States, his absences from the country, and his residence during the requisite period. The director noted that the affidavits that were submitted were neither credible nor amenable to verification, and that there was no proof that the affiants had director personal knowledge of the events and circumstances of the applicant's residency.

The director also noted that there were significant discrepancies in the applicant's current testimony, his previous testimony during his immigration interviews, and his current and previously filed immigration applications. Specifically, the director stated that the applicant testified under oath on March 9, 2006, before immigration officers, that he traveled outside the United States in December of 1982 and returned in April of 1983, and in May of 1988 returning

to the United States in June of 1988. The director noted that however, the service records showed that the applicant traveled outside the United States in December of 1983, April of 1987, and January of 1988. The director further noted that although the applicant testified that he was married in Ecuador in January of 1983 and that his children were born in Ecuador in 1983 and 1989, his statements were inconsistent with his testimony in which he claimed that his wife never visited the United States, thus making it impossible for him to have fathered his children. In conclusion, the director stated that the record contained numerous discrepancies that had not been resolved by the submission of independent objective evidence on the part of the applicant sufficient to establish his eligibility for Temporary Resident Status under Section 245A of the Immigration and Nationality Act.

On appeal, the applicant asserts that the affidavits submitted on his behalf are credible, that the affiants are citizens of the United States, and that they have provided proof of their residency during the requisite period and proof of their knowledge of the events attested to. The applicant also asserts that there has been no detailed reason given for the director's denial, and that he would suffer irreparable injury were his application to be denied on appeal. The applicant does not submit any evidence.

The applicant has not submitted any evidence on appeal sufficient to overcome the director's denial. Although the applicant makes reference to the affidavits addressed by the director, there has been no independent corroborating documentation presented to support the assertions. Moreover, to meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony. 8 C.F.R. § 245a.2(d)(6). Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

A review of the NOID and the director's decision dated September 6, 2006, reveals that the director accurately set forth a legitimate basis for denial of the Form I-687 application. On appeal, the applicant has not presented any evidence to overcome the director's decision. Nor has he specifically addressed the basis for denial. The multiple discrepancies, inconsistencies and contradictions left unexplained by the applicant calls into question the credibility of the applicant's statements and the documentation contained in the record. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. 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, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

Here, the applicant has failed to establish, by a preponderance of the evidence, his 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 requisite period. Section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2). The applicant has also failed to establish that he has been continuously

physically present in the United States since November 1986. Section 245A(a)(3) of the Act, 8 U.S.C. § 1255a(a)(3).¹ The appeal must therefore be dismissed.

According to an FBI report based upon the applicant's fingerprints, the Sleepy Hollow Police Department arrested the applicant on October 2, 1988, and charged him with *driving while intoxicated*. The record shows that the applicant was arrested again on August 30, 1992 and charged with *driving while intoxicated*. The record indicates that the applicant was convicted of a single *driving while intoxicated* misdemeanor charge on November 24, 1992.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.

¹ According to the record, the applicant was placed in removal proceedings on April 4, 1995 and was ordered excluded on September 6, 1995.