

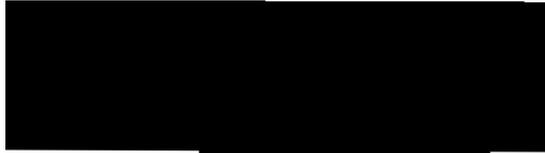
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
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Services

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FILE: [REDACTED]
MSC-05-351-11558

Office: CHICAGO

Date: **OCT 31 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: SELF-REPRESENTED

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 of the Chicago 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 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. The director indicated that the applicant had stated that he had no additional documents to submit.

On appeal, the applicant stated that he had brought additional documents to his interview with an immigration officer and he does not understand why the director indicated that the applicant stated that he did not have additional documentation. The applicant also stated that the affidavits he submitted had a complete name, address and copy of an identity document for each affiant.

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 September 16, 2005. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant listed the following addresses, failing to provide the requested dates of residence: [REDACTED], Houston, Texas; [REDACTED], Elgin, Texas; [REDACTED], Chula Vista, California. The applicant’s failure to provide dates of residence at these addresses casts some doubt on his claim to have resided in the United States during the requisite period. At part #33 where applicants were asked to list all employment in the United States since entry, the applicant listed the following positions, failing to provide the requested dates of employment: Machine operator of the Chinese Newspaper; machine operator for Hi Tec Molding; and instrument tech. for TC Industries.

In an attempt to establish continuous unlawful residence during the requisite period, the applicant provided multiple documents. The applicant provided numerous declarations that are unsigned.

These include declarations from [REDACTED], and [REDACTED]. These declarations are accompanied by copies of identity documentation for the declarants, as well as documents relating to the declarants' residence in the United States during the requisite period. Since these declarations are unsigned, they will be given no weight in establishing that the applicant resided in the United States during the requisite period.

The applicant also provided a copy of a Form 1099-MISC listing his name and indicating that he was employed with Southern Chinese News & Advertising during 1986. This document constitutes some evidence that the applicant resided in the United States for some portion of 1986.

The applicant provided copies of registered mail receipts for mail sent from the applicant at the [REDACTED] address in September and November of 1986 and January, March, June, and August of 1987. These documents constitute some evidence that the applicant resided in the United States during these particular months.

The applicant provided an additional affidavit from [REDACTED] dated February 5, 2007, which states that the applicant was living in the affiant's home from December 1981 to September 1985 at [REDACTED] in Escondido, California. This information is inconsistent with the applicant's Form I-687, where he failed to indicate that he had resided at the [REDACTED] address. This inconsistency casts doubt on the affiant's ability to confirm that the applicant resided in the United States during the requisite period.

The applicant provided a notarized declaration from [REDACTED] of El Taller TV & VCR Service in Houston, Texas. This declaration states that the applicant worked for El Taller TV & VCR Service from October 1985 to December 1989. This is inconsistent with the applicant's Form I-687, where he failed to list this employer when asked to list all employment in the United States. This inconsistency casts doubt on the declarant's ability to confirm that the applicant resided in the United States during the requisite period.

In denying the application the director concluded 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 indicated that the applicant had stated that he had no additional documents to submit.

On appeal, the applicant stated that he had brought additional documents to his interview with an immigration officer and he does not understand why the director indicated that the applicant stated that he did not have additional documentation. The applicant also stated that the affidavits he submitted had a complete name, address and copy of an identity document for each affiant.

In summary, the applicant has provided attestations that are unsigned or conflict with the information that he provided on his Form I-687 application. He provided credible evidence indicating that he resided in the United States during portions of 1986 and 1987. The applicant

failed to provide credible evidence of his residence in the United States for the remainder of the 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 applicant's failure to provide all the requested information on his Form I-687 application, the inconsistencies between the Form I-687 and the documents he submitted, and his 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.