

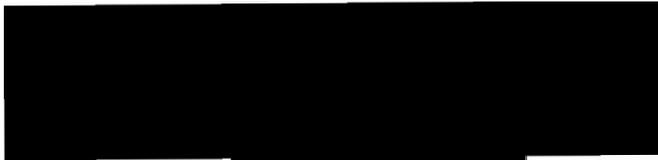
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



41

FILE: [REDACTED]
MSC-05-273-14146

Office: LOS ANGELES

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 "RWiemann".

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 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 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 identified an inconsistency among the documents provided by the applicant.

On appeal, the applicant states that he has been in the United States since 1980. He states that he assumed the name [REDACTED] at that time, and he had no identification or Social Security number. The applicant provides copies of documentation of his affaints' residence in the United States during the requisite period. The applicant fails to directly address the inconsistency raised by the director.

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 June 30, 2005. At part #4 where applicants were asked to list all other names used or known by, the applicant stated nothing. 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 during the requisite period: [REDACTED], Oxnard, California from 1980 to 1986; [REDACTED], Oxnard, California from 1986 to 1987; and [REDACTED], Port Hueneme, California from 1987 to 1989. At part #31 where applicants were asked to list all affiliations or associations, clubs, organizations, churches, unions, businesses, etc., 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: Construction worker for [REDACTED] Construction) from 1980 to 1988; and laborer for [REDACTED] Family (contractor help for ranches) from 1983 to 1986.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided voluminous documentation. Documents relating to the requisite period include copies of time sheets, stamped envelopes, an immunization record, a tax letter, and multiple attestations.

The applicant provided two weekly time tickets listing his name and two dates in 1988. Neither of the documents is signed, and neither lists the employer name or the applicant's address. Therefore, these documents do not carry any weight in establishing that the applicant resided in the United States during the requisite period.

The applicant provided photocopies of several envelopes addressed to the applicant in the United States. The postmark dates on the envelopes are not clearly legible. Photocopies of two envelopes have the year "1982" written next to the envelopes. These envelopes are addressed to the applicant at the [REDACTED] address. Since the handwritten notes appear to indicate that the envelopes were postmarked in 1982, this is inconsistent with the applicant's Form I-687, where he indicated that he lived at the [REDACTED] address from 1986 to 1987. A photocopy of a third envelope has the year "1988" written next to the envelope. This envelope is addressed to the applicant at the [REDACTED] address. Again, the indication that the envelope was postmarked in 1988 is inconsistent with the applicant's Form I-687, where he indicated that he lived at the [REDACTED] address during 1988. The date on the postmark of the last envelope is illegible and there is no notation next to the envelope. Because the postmarks on the envelopes are not clearly legible and the notations surrounding the envelopes are inconsistent with the applicant's Form I-687, these documents carry no weight in establishing that the applicant resided in the United States during the requisite period.

The applicant provided a photocopy of the immunization record for the applicant's child, [REDACTED]

The second page of the immunization record lists vaccinations occurring in November 1984, February 1985, and June 1985. It is noted that the entries for vaccinations on these dates fail to list the doctor office or clinic where the vaccination occurred. Therefore, there is no way to contact the doctor's office to verify the authenticity of this record. In addition, evidence that the applicant's child was present in the United States is only indirect evidence allowing an inference that the applicant was present in the United States. Therefore, this document only constitutes some minimal evidence that the applicant was present in the United States in November 1984, February 1985, and June 1985.

The applicant included a form letter from the Internal Revenue Service (IRS) addressed to [REDACTED] the name that the applicant indicates on appeal that he has used as an alias. The form letter states that the IRS only keeps tax records on file for a limited number of years and that Form 1040 has been destroyed for the tax years 1983 to 1986. This document fails to indicate that tax records exist for the period from before January 1, 1982 until 1983 and from 1986 until the end of the requisite period. In addition, the absence of tax records for 1983 to 1986 does not establish that tax records existed for that period or that the applicant continuously resided in the United States

during that period. Therefore, this document will be given no weight in establishing that the applicant resided in the United States during the requisite period.

The applicant provided a declaration dated May 17, 2005 from [REDACTED] which states that the declarant has known the applicant “for the past 20 or so years. From about 1985 to the present day.” This information is inconsistent with the applicant’s statement on his Form I-687 application indicating that he worked for [REDACTED] from 1980 to 1988. This inconsistency casts doubt on Mr. [REDACTED] ability to confirm that the applicant resided in the United States during the requisite period and on the applicant’s claim to meet the residency requirements for temporary resident status.

The applicant provided a notarized declaration from [REDACTED] which states that the declarant met the applicant at church in 1983, when the declarant was living in Oxnard, California. The declarant stated that, “[o]ver the years,” she has been “in the good company” of the applicant. This declaration fails to state that the applicant resided in the United States during the requisite period. The declaration lacks detail regarding the nature and frequency of the declarant’s contact with the applicant, and the region where the applicant resided during the requisite period. Therefore, this declaration will be given only nominal weight in establishing that the applicant resided in the United States during the requisite period.

The applicant submitted an undated notarized declaration from [REDACTED] which states that the declarant met the applicant at the Mormon Church in Oxnard, California in May 1982. The declarant stated that he “would see” the applicant on a weekly basis at church gatherings. Since the declarant failed to indicate the time period during which he saw the applicant in church on a weekly basis, this declaration fails to specifically state that the applicant resided in the United States during the requisite period other than during 1982. In addition, the declaration is inconsistent with the Form I-687, where the applicant failed to state that he was affiliated with the Mormon Church in Oxnard when asked to list all affiliations or associations with churches. Therefore, this declaration will be given only nominal weight in establishing that the applicant resided in the United States during the requisite period.

The applicant submitted a notarized declaration from [REDACTED] which states that the declarant met the applicant in September 1980 when he decided to rent a room at the declarant’s mother’s home at [REDACTED] in Oxnard. The declarant stated that the applicant rented the room from 1980 until sometime in 1986. This declaration lacks detail regarding the nature and frequency of contact between the declarant and the applicant during the requisite period. However, this declaration constitutes some evidence that the applicant resided in the United States from 1980 until sometime in 1986.

The applicant provided a declaration from [REDACTED], which states that the declarant has known the applicant since 1982. She stated that the applicant and her husband were employed at the same place. They worked for a contractor named [REDACTED]. She met the applicant when he and her husband left work together. In 1987, she met the applicant’s wife when the declarant went to the applicant’s home for dinner. The declarant stated that she would “always” see the

applicant when she would take lunch to her husband at work sites. This information is inconsistent with the applicant's Form I-687, where he failed to indicate that he was employed by [REDACTED]

In addition, the declaration lacks detail regarding the frequency of the declarant's contact with the applicant and the region where the applicant resided during the requisite period. Therefore, this declaration will be given only nominal weight in establishing that the applicant resided in the United States during the requisite period.

The applicant provided a declaration dated June 14, 2005 from [REDACTED] which states that the declarant met the applicant in 1980 at the declarant's residence in 1980 in Oxnard. The applicant is married to the declarant's niece. The declarant stated that he continues to socialize with the applicant around one or two times per week. The applicant came to live with the declarant at the [REDACTED] address in "around 1986" for "around one year." The declarant stated that, later, the applicant moved to different addresses and all of them were in the city of Oxnard. This declaration constitutes some evidence that the applicant resided in the United States from 1980 through the end of 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 identified the inconsistency between the applicant's claim on his Form I-687 to have worked for [REDACTED] from 1980 to 1988 and [REDACTED] claim in an affidavit not to have met the applicant until 1985.

On appeal, the applicant states that he has been in the United States since 1980. He states that he assumed the name [REDACTED] at that time, and he had no identification or Social Security number. The applicant provides copies of documentation of his affairs' residence in the United States during the requisite period. The applicant fails to directly address the inconsistency raised by the director in relation to the applicant's claim of employment with Mr.

In summary, the applicant has submitted contemporaneous documents that carry only nominal weight in establishing that he resided in the United States during the requisite period. He provided attestations that are inconsistent with his Form I-687 application, lack sufficient detail, or fail to state that the applicant resided in the United States during the requisite period. The applicant provided two declarations that appear credible and relate to 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 contradictions between the applicant's Form I-687 and the documents he submitted, the applicant's failure to respond to these contradictions once identified by the director, 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.

It is noted that the applicant's Form I-694 appeal was submitted by an individual identified as [REDACTED]. On September 25, 2008, the AAO contacted Ms. [REDACTED] to request that a Form G-28 Notice of Entry of Appearance as Attorney signed by her and the applicant be provided within five business days. Ms. [REDACTED] failed to timely provide the Form G-28. Therefore, her representation will not be recognized by the AAO.

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