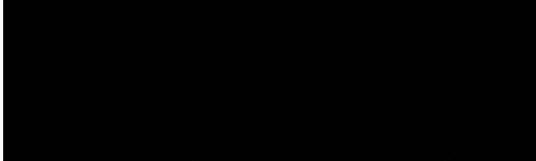


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and Immigration
Services**

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FILE:

MSC-05-236-14238

Office: HOUSTON

Date:

SEP 10 2008

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:

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. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed or rejected, 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.

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 District Director, Houston. 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 denied the application on January 25, 2007. The director determined that the applicant failed to establish, by a preponderance of the evidence, continuous unlawful residence in the United States throughout the requisite period. Specifically, the director noted that several of the individuals that provided written affidavits in support of the Form I-687 application provided conflicting statements when contacted by telephone.

On appeal the applicant states that the witnesses provided conflicting information due to their “faulty memories.” The applicant also states that he is unable to produce additional documentation because most of the documentation that he had was destroyed as a result of tropical storm Allison.

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)(1) 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 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 May 24, 2005. The applicant submitted affidavits from the following individuals:

[REDACTED], and [REDACTED]. All of the affidavits contain similar language. Each affiant states the month and year in which they met the applicant and then states “and since that time he has been my good friend to the present time. He is a very good husband, father and son. Also a hardworking, trustworthy and honest individual.” None of the affiants claim to have personal knowledge of the affiant’s residence in the United States during the requisite period. Further, none of the affiants explain how they came to meet the applicant, how they date their initial acquaintance with the applicant or the nature and frequency of their contact with the applicant during the requisite period. Given these deficiencies, these affidavits have only minimal weight as evidence of the applicant’s residence in the United States during the requisite period.

Further, as noted above, when the director contacted the affiants a number of them provided information that conflicted with their written affidavits. For example, [REDACTED] stated in his written affidavit that he met the applicant in November of 1984. However, when contacted by the director in 2006, [REDACTED] stated that he had known the applicant for only twelve or thirteen years. Similarly, [REDACTED] stated in his written affidavit that he met the applicant in September of 1983. However, when contacted by the director in 2006, [REDACTED] stated that he had known the applicant for only twelve years. Also, [REDACTED] stated in her written affidavit that she first met the applicant in November of 1981. However, when contacted by the director in 2006, [REDACTED] stated that she had only known the applicant for approximately six to ten years. Finally, [REDACTED]

██████████ stated in her written affidavit that she first met the applicant in May of 1987. However, when contacted by the Service, ██████████ stated that she was unsure of the exact date that she met the applicant, but that it was probably in 1990. The applicant has provided no explanation for these inconsistent statements other than to say that they were due to the faulty memories of the affiants. These are material inconsistencies which detract from the credibility of these affidavits.

The applicant also submitted a letter from ██████████ co-owner of ██████████. The letter states that the applicant was employed by ██████████ from February 1992 until February 1990 and that the applicant performed sanding and finishing of wood floors as well as repairs during that time. The letter is deficient in that it does not comply with the regulation relating to past employment records. For example, the letter does not provide the applicant's address at the time of employment and does not state whether or not the information was taken from official company records. 8 C.F.R. § 245a.2(d)(3)(i). Even absent compliance with the regulation, the letter is considered a "relevant document" under 8 C.F.R. §245a.2(d)(3)(iv)(L). See, *Matter of E-M-* 20 I&N Dec. at 81. However, the letter lacks any details that would lend it credibility. The letter therefore has minimal weight as evidence of the applicant's residence in the United States during the requisite period.

The applicant also submitted envelopes sent to him from Mexico, as well as the letters contained in those envelopes. The letters are dated December 31, 1980, December 26, 1981, March 29, 1983, May 27, 1984, May 15, 1985, April 19, 1986, November 1, 1987 and January 5, 1988. The addresses on the envelopes correspond with the addresses provided by the applicant on his Form I-687 application. These letters are some evidence of the applicant's presence in the United States at particular times during the requisite period. However, these letters are not sufficient to show that the applicant was residing in the United States during the requisite period.

The evidence must be evaluated not by the quantity of evidence alone but by its quality. *Matter of E-M-*, *supra* at 80. 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 his 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, and the conflicting information provided by some of the affiants, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States for the requisite period. 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