



U.S. Citizenship  
and Immigration  
Services

**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

**PUBLIC COPY**

L1

[REDACTED]

FILE:

[REDACTED]

Office: PHOENIX (RENO)

Date:

**SEP 18 2008**

MSC 06 060 15497

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.

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, Phoenix. 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.

On appeal, the applicant asserts that he has established his unlawful residence for the requisite time period, that he is qualified under Section 245A of the Act and the CSS/Newman settlement agreements, and that his application for temporary resident status should be granted.

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 245(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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

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.

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 submitted the following documentary evidence that is relevant to the requisite period:

#### Witness Statements

- [REDACTED] submitted a sworn statement wherein she stated that her brother (the applicant) arrived in the United States on December 4, 1981. Ms. [REDACTED] further states that the applicant stayed with her for three months, and that he began working at the Oregon Canyon Ranch on March 1, 1982. The witness provides no additional relevant information.
- [REDACTED] submitted a statement that is neither sworn nor notarized. Mr. [REDACTED] states that the applicant is his friend and that the applicant came to the United States on December 1, 1981 to be reunited with his (the applicant's) sister. The witness stated that he is the godfather of the applicant's son, that the two speak to each other on the telephone often, and that the applicant has resided in Paradise Valley, NV since he arrived in the United States. The applicant provides no additional relevant information.
- [REDACTED] provided a notarized statement wherein she stated that she is a “true native of Paradise Valley, NV,” and that the applicant came to Paradise Valley in 1985 and

has continued to live and work there since that time. The applicant provides no additional relevant information.

- The applicant submitted an unsworn and unsigned statement wherein he stated that he entered the United States on December 1, 1981 without inspection and stayed with his sister for two months. The applicant stated that he first worked for Oregon Canyon Ranch from 1982 – 1985, and then was employed by Sandhill Feedlot until 1989. The applicant further states that he applied for temporary resident status under Section 210 of the INA, but was ultimately denied because the work he performed was not considered seasonal.

Although the applicant has submitted three witness statements and his personal unsworn and unsigned statement in support of his application, the applicant has not established his continuous unlawful residence in the United States for the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality; an applicant must provide evidence of eligibility apart from his or her own testimony; and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility.

Two of the witness statements ( [REDACTED] and [REDACTED] ) state that the witnesses know the applicant by virtue of family relationship or friendship, and that the applicant came to the United States in 1981. [REDACTED] stated that the applicant came to Paradise Valley in 1985, and that he has continued to live and work there since that time ( [REDACTED] statement is dated November 6, 2005). None of the witnesses state that the applicant has resided in the United States for the duration of the requisite period. None of the witnesses provide concrete information, specific to the applicant and generated by the asserted associations with him, that would reflect and corroborate the extent of those associations and demonstrate that they were a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the affidavits. To be considered probative and credible, witness affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the affiant does, by virtue of that relationship, have knowledge of the facts alleged. Upon review, the AAO finds that, individually and together, the affidavits and unsworn witness statements do not indicate that their assertions are probably true. Therefore, they have little probative value.

It should further be noted that the applicant's unsworn and unsigned statement, standing alone, is insufficient to establish his continuous unlawful residence in the United States for the duration of the requisite period. As previously stated, in order to meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

### Employment

- submitted two employment letters on the letterhead of the “101 Ranch.” In a statement dated October 6, 1992, [REDACTED] states that the applicant worked for him in 1987 and 1988, performing irrigation labor, harvesting, livestock care, and equipment operation.

In a letter dated August 25, 1987, [REDACTED] stated that the applicant was currently employed by the “101 Ranch,” having begun his employment in April of 1984. The applicant was reported to work in the farming and cattle operations operating machinery and assisting in “cow work.”

- [REDACTED] submitted an employment letter on the letterhead of “Sandhill Feedlot” dated November 2, 2005, and stated that the applicant was employed as a farm laborer and ranch hand from 1986 – 1989.
- [REDACTED] submitted an employment letter on the applicant’s behalf wherein she stated that the applicant was employed by her husband at Oregon Canyon Ranch from 1982 through 1985, earning \$800 per month plus groceries. He performed varied labor on the ranch depending on the season.

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant’s employment must: provide the applicant’s address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant’s duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

The employment statements provided are of little evidentiary value as they do not provide the information required by the above cited regulation. The statements do not provide the applicant’s address at the time of employment, show periods of layoff (or state that there were no periods of layoff), or declare whether the information was taken from company records, and identify the location of such company records and state whether such records are accessible, or in the alternative, state the reason why such records are unavailable. The statements shall, accordingly, be afforded little weight.

The evidence submitted by the applicant, and listed above, does not establish the applicant’s continuous residence in the United States for the requisite time period. Taken as a whole, the evidence submitted lacks sufficient detail to establish the applicant’s presence in this country for the requisite time 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 his claim. As previously stated, pursuant to 8 C.F.R. § 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 during the requisite period.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he has continuously resided in an unlawful status in the United States for the requisite period as required 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.