

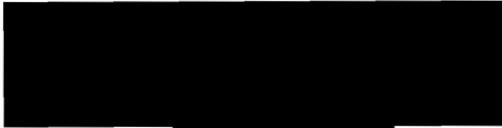
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U.S. Citizenship  
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FILE: [REDACTED]  
MSC-06-070-13520

Office: LOS ANGELES

Date: **SEP 23 2008**

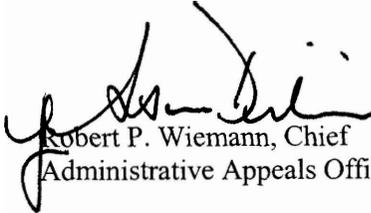
IN RE: Applicant: [REDACTED]

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.

  
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, Los Angeles. 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 district director noted that the attestations provided by the affiants were inconsistent with the applicant's statements concerning his affiliation with clubs or religious organizations. The director also noted that the affiants failed to demonstrate direct personal knowledge of the applicant's whereabouts and circumstances during the requisite period. The director further noted that the applicant had failed to list any residence prior to 1987 on his I-687 application. 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 his claim of eligibility for temporary resident status and asserts that although assured by the Service that he would have an opportunity to correct his mistakes, he was never given an opportunity to correct the errors that appeared on his I-687 application. He submits additional evidence on appeal.

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. 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 December 9, 2005.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted copies of his California Identification Card with an issue date of December 30, 1987, and Bank of America check number 1014 which indicates that he has been a customer since 1988. Although this evidence demonstrates the applicant's presence in the United States since 1987, it is insufficient to establish his continuous unlawful residence throughout the requisite period.

The applicant also submitted the following affidavits as evidence:

- Affidavits dated February 2, 2006 and October 10, 2006 from [REDACTED] in which he stated that he has known the applicant for the past 25 years. The affiant also stated that he met the applicant in December of 1981 at the Pomona Masonic Hall where he was Chairman of the Pomona DeMolay Chapter. The affiant further stated that the applicant is a life member of the Masons of California. Here, the affiant's information is inconsistent with what the applicant indicated on his I-687 application at part #33 where when asked to list all his affiliations and associations with associations, churches, organizations, or clubs he indicated "N/A." Because the affiant's statement is in conflict with what the applicant indicated on his Form I-687 application, doubt is cast on the authenticity of the document. The affiant fails to specify the frequency with which he saw and communicated with the applicant during the requisite period. It is also noted that there is nothing in the record to show that the affiant's statements concerning the applicant's presence in the United States is based upon his first hand knowledge of the applicant's whereabouts and the circumstances of his residency during the requisite period. Because the affidavit is inconsistent with statements made by the applicant and because it lacks detail, it can be afforded only minimal weight in establishing the applicant's residence in the United States during the requisite period.
- An affidavit dated October 16, 2006 from [REDACTED] in which he stated that he has known the applicant for over 20 years, and that the applicant has attended numerous functions at the Masonic Lodge over the 20 year period. The affiant also stated that the applicant has always paid his Masonic Lodge dues. Here, the affiant's statement is inconsistent with what the applicant indicated on his I-687 application where he fails to indicate any association or affiliation with any organization or club; hence, creating doubt of the authenticity of his statements. Because this affidavit is inconsistent with the statements made by the applicant, it can be afforded only minimal weight in establishing the applicant's residence in the United States during the requisite period.
- An affidavit dated October 17, 2006 from [REDACTED] in which he stated that he has known the applicant since the early 1990's. Here, the affiant does not attest to knowing the applicant during the requisite period, and therefore, his statement cannot be afforded any probative value in establishing the applicant's presence in the United States since before January 1, 1982.

In denying the Form I-687 application, the director noted that the applicant had submitted affidavits that were lacking in detail and were inconsistent with statements that he made. The director also determined that the applicant failed to list on his I-687 application his places of residence prior to 1987.

On appeal, the applicant states that he discovered at the time he submitted his I-687 that a lot of errors were made on his application, and that he was informed that he would be able to correct them at the time of his appointment with immigration officials. He states however that he was never given an opportunity to correct the errors that appeared on his I-687 application. The applicant submits as evidence a copy of a Form I-687 that he signed in June of 1990 in which he states that he resided at [REDACTED] from November of 1981 to May of 1986; and [REDACTED] May of 1986 to January of 1990. This information is inconsistent with the statements made by the applicant on his I-687 application that was submitted on December 9, 2005, where he indicated at part #30 that he resided at [REDACTED] California from 1987 to 1991. There has been no independent documentation submitted to explain this inconsistency.

The applicant also submitted the following affidavits on appeal:

- An affidavit dated February 21, 2007 from [REDACTED] in which he states that he has known the applicant for over 20 years, and he reiterates his statements made in his affidavit noted above. In addition, the affiant states that the applicant resided at [REDACTED] California from November of 1981 to May of 1986; and [REDACTED] from May of 1986 to January of 1990. Here, although the affiant states that he has known the applicant for over 20 years, he fails to specify the date which he met the applicant. He fails to indicate the frequency with which he saw and communicated with the applicant during the requisite period. He also fails to demonstrate that his statements are based upon first hand knowledge of the applicant's whereabouts and circumstances of his residency during that period.

An affidavit dated February 21, 2007 from [REDACTED] in which he states that he has known the applicant since December of 1981, and he reiterates his statements made in his affidavits noted above. In addition, the affiant states that the applicant resided at [REDACTED] California from November of 1981 to May of 1986; and [REDACTED] California from May of 1986 to January of 1990. Here, the affiant's statements contradict one another in that he claims to have met the applicant in December of 1981, and in contradiction he attests to the applicant's residence since November of 1981. Hence, doubt is cast on the authenticity of this attestation.

In the instant case, the applicant has failed to submit sufficient evidence or argument to overcome the grounds for the director's denial. The affidavits submitted are inconsistent with statements made by the applicant and are lacking in detail. The affidavit submitted by [REDACTED] on February 21, 2007 contains contradictory statements. Although the applicant claims to have resided in the United States since he was fifteen years old, he has provided neither school records nor immunization records to substantiate such claim.

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 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 reliance upon affidavits that are inconsistent with his statements and that have little 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.