

U.S. Department of Homeland Security

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Washington, DC 20529



**U.S. Citizenship
and Immigration
Services**

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

PUBLIC COPY

FILE:

MSC 05 188 13256

Office: LOS ANGELES

Date:

NOV 29 2007

IN RE:

Applicant:

APPLICATION: Application for Temporary Resident Status under 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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded for further action and consideration.

The director determined that the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that he attempted to file a Form I-687, Application for Status as a Temporary Resident, with the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS) in the original legalization application period between May 5, 1987 to May 4, 1988. Therefore, the director concluded that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and denied the application.

On appeal, the applicant states that he has lived in the United States since 1965, and that he was always been paid in cash for his work and paid all of his bills in cash. The applicant states that for this reason, he does not have copies of receipts for any of his bills. The applicant also states that he was nervous and disoriented during his interview. The applicant submits additional documentation in support of his 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 Immigration and Nationality Act (Act), 8 U.S.C. § 1255a(a)(2).

An applicant applying for adjustment to temporary resident status must 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).

For purposes of establishing residence and presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the alien attempted to file a completed Form I-687 application and fee or was caused not to timely file, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

An alien applying for adjustment of status has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, 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. See 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.* 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 (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 from prior to January 1, 1982 through the date he attempted to file a Form I-687 application with the Service in the original legalization application period of May 5, 1987 to May 4, 1988. Here, the submitted evidence is relevant, probative, and credible.

In an attempt to establish continuous unlawful residence since before January 1, 1982, as claimed, the applicant, on appeal, submits copies of an April 3, 2007 printout from the Social Security Administration, showing that wages were reported for him throughout the qualifying period. The applicant has thus established by primary evidence that he resided continuously in the United States from prior to January 1, 1982 through 1988. Accordingly, the applicant’s appeal will be sustained. However, the application cannot be approved as the record currently stands and the matter is remanded to the director for further action.

The record reflects that the applicant filed a Form I-687 (XSD 88 03551 35) with the Western Service Center on May 4, 1988, which was denied because he failed to submit sufficient evidence to establish his continuous residency in the United States from prior to January 1, 1982 to 1984. An appeal of that decision was denied by the Legalization Appeals Unit. The applicant was therefore not discouraged or denied an opportunity to file for adjustment of status, and is therefore not a class member pursuant to the CSS/Newman Settlement Agreements.

The record reflects that on August 31, 2000, the applicant was convicted in the Superior Court of California, County of Los Angeles, for a violation of California Vehicle Code 23152(b), driving a vehicle with an alcohol content of 8% or more. The applicant was sentenced to 13 days in the county jail, ordered to pay a fine of \$390, and placed on 36 months summary probation. The record also reflects that on March 12, 2004, the applicant was convicted in the Superior Court of California, County of Los Angeles, for a violation of California Vehicle Code 20002(a), hit and run with property damage. The applicant was placed on 36 months summary probation and ordered to pay a restitution fine of \$100. Both of the offenses for which the applicant was convicted are misdemeanors and do not render him ineligible for benefits under Section 245A(a)(3) of the Act.

The record is remanded for the director to consider the applicant’s eligibility for class membership and for issuance of a new decision.

ORDER: The matter is remanded for further action and consideration pursuant to the above.