

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**PUBLIC COPY**

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



U.S. Citizenship  
and Immigration  
Services

L1

FILE:

MSC 05 251 19401

Office: MIAMI

Date:

**AUG 15 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. 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 "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, Miami, Florida. 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, on June 8, 2005. The applicant was interviewed on September 1, 2006 in connection with his Form I-687. The director issued a Notice of Intent to Deny (NOID) the application on September 5, 2006 and the applicant submitted a September 26, 2006 response. Upon review of the record, the director denied the application on October 19, 2006, determining 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 submits a brief statement and resubmits his timely filed response to the director's NOID.

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 applicant attempted to file the application. 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 or attempting to file the application. 8 C.F.R. § 245a.2(b)(1).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "until the date of filing" shall mean 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 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. 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. See 8 C.F.R. § 245a.2(d)(6).

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 (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 evidence to establish his entry into the United States prior to January 1, 1982 and continuous unlawful residence since such date through the date he attempted to file the application.

On the Form I-687, the applicant indicated he had last entered the United States on July 29, 2004. The applicant listed his addresses for the pertinent time period as: [REDACTED] Cedar Rapids, Iowa from April 1981 to August 1983; and [REDACTED] Davenport, Iowa from September 1983 to May 1988. The applicant did not list any employment during the pertinent time period on the Form I-687; indicating his first employment in the United States began in September 1991 in Miami, Florida. The applicant listed his only absence from the United States during the pertinent time period as June 1982 to July 1982 to attend his father's funeral. The applicant's date of birth is listed on the Form I-687 as October 29, 1959.

The record also includes a Form I-687 submitted to establish the applicant's class membership. The Form I-687 lists the applicant's employment during the pertinent time period as: Reliance Construction as a general maintenance worker and assistant from May 1981 to December 1982; and self-employed as a lawn care worker from September 1983 to May 1988.

In a sworn statement dated April 4, 2005, the applicant declared that he first entered the United States on April 30, 1981 with a B-1/B-2 visa at Newark, New Jersey, traveled to New York and stayed in a youth hostel for eight or ten days, and then traveled to Iowa where he overstayed his visa; that he left the United States in 1982 to attend his father's funeral and returned a month later with a B-1/B-2 visa; and that he next left the United States in 1989 to visit his sick mother and returned to the United States a month later with a B-1/B-2 visa obtained in India. The record contains portions of the applicant's tax records beginning in the year 2000. In the applicant's September 26, 2006 response to the director's NOID, the

applicant indicates that he lost or misplaced passports previously issued to him that would confirm his entries and exits into and from the United States during the applicable time period.

The applicant provided the following documents to establish his unlawful continuous residence in the United States for the applicable time period:

- A July 12, 1991 affidavit signed by [REDACTED] who declares that he is the owner/lessee of real property located at [REDACTED] in Cedar Rapids, Iowa and that the applicant resided at the address from April 1981 to August 1983. The record also includes information regarding the affiant's death on March 2, 1996.
- An undated letter signed by an individual in an undisclosed position on the letterhead of Light Company Employees Credit Union in Cedar Rapids, Iowa who states that the applicant applied for a position but was not considered for the job because he did not have a social security number.
- A July 10, 1991 letter signed by an individual in an undisclosed position on the letterhead of AJRAM Fabric and Supply in Cedar Rapids, Iowa who states that the applicant applied for a job as an office clerk in 1981 but was not considered for the job because he did not have a social security card or work permit.
- A July 15, 1991 affidavit signed by [REDACTED] who states that he was personally acquainted with the applicant in Cedar Rapids, Iowa from approximately May 1981 to 1983.
- A July 3, 1991 letter signed by an individual in an undisclosed position on the letterhead of Reliance Construction in Cedar Rapids, Iowa who declares that the applicant worked for the company as "general maintenance and assistance" during 1981 to 1982.
- An envelope addressed to the applicant in care of [REDACTED] in Cedar Rapids, Iowa. The stamps affixed to the envelope contain the numbers "1980," and the postmark appears to bear the date 1981.
- A receipt issued by Gun Hill Building Supply located in Bronx, New York that appears to include the date 1981.

On appeal, the applicant again declares that he entered the United States as a nonimmigrant in 1981 and maintained continuous unlawful residence in the United States from January 1, 1982 to May 4, 1988 and that no single absence outside the United States exceeded 45 days or in the aggregate 180 days during the applicable time period.

The AAO has reviewed the record in this matter and finds that the applicant has not established his continuous unlawful residence in the United States for the applicable time period. The affidavit provided by [REDACTED] is insufficient to establish the applicant's unlawful residence from April 1981 to August 1983. The affidavit does not disclose information regarding the applicant's absence. Moreover, the affidavits lack specific details demonstrating the extent of the affiants contacts with the applicant that would corroborate the reliability of the affidavits.

The undated letter from the Light Company Employees Credit Union does not provide sufficient information regarding the time frame of the applicant's request for employment; neither does the letter otherwise contribute to establishing the applicant's continuous residence in the United States for the totality of the applicable period. Similarly, the July 10, 1991 letter on the letterhead of AJRAM Fabric and Supply in Cedar Rapids, Iowa, although indicating the applicant's interest in a job in 1981, does not provide sufficient information regarding the applicant, his residence in the United States, or the location of the records from which the information was accessed. The July 15, 1991 affidavit signed by Patrick Howard does not provide sufficient information to establish how this individual met the applicant or evidence of the circumstances and events of subsequent interactions with the applicant. This affidavit is not probative.

The receipt submitted has little evidentiary value. It does not bear the applicant's name. Even a receipt with the applicant's name would at most indicate the applicant's presence in the United States on the date of the receipt. Likewise, the stamped envelope has little evidentiary weight, as it only indicates that the applicant was present or reachable at an address in the United States on or about the date of the postmark on the envelope.

The AAO has also reviewed the July 3, 1991 employment letter signed on behalf of Reliance Construction in Cedar Rapids, Iowa. Although the letter is on employer letterhead, the letter does not include the information necessary to comply with 8 C.F.R. § 245a.2(d)(3)(i), which requires a declaration that the information was taken from company records, that identifies the location of such company records, and states whether such records are accessible or in the alternative state the reason why such records are unavailable. Neither does the affidavit disclose the applicant's absence(s) from the workplace. The letter of employment, therefore, is insufficient to establish the employment of the applicant during the applicable time period.

The record does not contain information, other than the applicant's statement, addressing the time period after 1983 to 1988. The applicant has not provided any corroborating evidence to establish his unlawful and continuous residence during this time period.

Upon review of the entire record in this matter, the AAO finds the documentation submitted lacks probative value in establishing the applicant's continuous unlawful residence in the United States for the requisite time period. The deficient affidavits and documents and the applicant's statements comprise the only evidence of the applicant's residence in the United States from prior to January 1, 1982 through the requisite time period. The statements and affidavits lack credibility and probative value for the reasons noted. The absence of credible and probative 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. The applicant has failed to meet his burden of proof and failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application, 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. The appeal will be dismissed.

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