

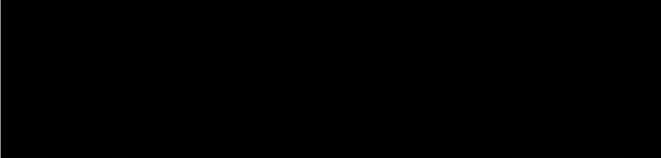


U.S. Citizenship
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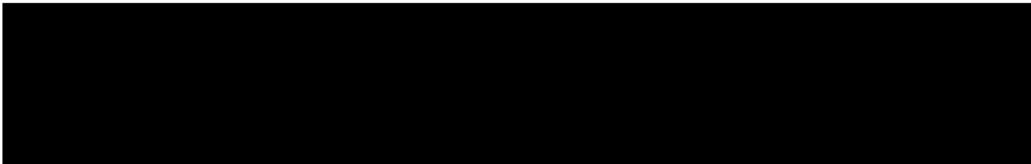
Office: LOS ANGELES

Date: FEB 28 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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case 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.


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, and 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. Specifically, the director found the affidavits submitted on the applicant's behalf to be lacking in relevant information and overall insufficient for the purpose of establishing the applicant's unlawful residence during the requisite time period. Accordingly, the director denied the application, finding that the applicant had not met [his or her] 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 summarizes the events that preceded the director's adverse decision and asserts that the director did not consider the applicant's verbal testimony. The applicant maintains that he is eligible for temporary resident status.

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). 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).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and 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 alien 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.* 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 during the requisite time period. In support of the application, the applicant submitted three separate affidavits dated December 24, 2005 from [REDACTED] who claimed that the applicant lived with and worked for the affiant. The affiant claimed that the applicant resided at [REDACTED] in California and worked for the affiant at B&G Furniture Refinishing from July 15, 1981 to November 25, 1990.

After reviewing the record, Citizenship and Immigration Services (CIS) issued a Form I-72 dated November 20, 2006 instructing the applicant to provide additional evidence to corroborate his claimed residence during the requisite period. With regard to the affiant whose affidavit was discussed above, the applicant was instructed to provide proof of the affiant's residence in the United States from 1982 to 1986.

The applicant's response included four third party declarations from affiants who provided the approximate date and circumstances of their respective first encounters with the applicant. Only two of the affiants actually claimed to know the applicant since prior to January 1, 1982. One of the affiants claimed that her first encounter with the applicant was in May 1981 and the other claimed to have met the applicant in January 1981. However, in light of the information provided by the applicant in No. 30 of his Form I-687, neither affiant's statement can be deemed credible, as according to the applicant, he first commenced his residence in the United States in July 1981. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). In the present matter, the inconsistency between the affiants' statements and the applicant's claim has not been resolved. As such, the statements of [REDACTED] and [REDACTED] have minimal probative value in establishing the applicant's residence in the United States during the requisite time period.

While there are no similar inconsistencies between the statements of the two remaining affiants, neither affiant claimed to have known the applicant since prior to January 1, 1982. Rather, [REDACTED] only generally stated that he met the applicant in 1982 without providing the month the two purportedly met, and [REDACTED] the last affiant, only claimed to have known the applicant since 1987. Furthermore, neither affiant provided detailed information about the applicant's life in the United States to support his or her claim of having known the applicant during any portion of the requisite time period.

On appeal, the applicant merely provides an explanation to establish that the births of his four children abroad is not inconsistent with his claim of having resided continuously in the United States during the requisite time period. While the applicant's explanation is plausible, the record remains unsupported with sufficient documentation in support of the applicant's claim. As previously noted, each of the submitted documents is deficient either in its credibility or in its content. Therefore, none of the declarations have the necessary probative value to support the applicant's claim. The absence of sufficiently detailed supporting 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 documents with minimal probative value, it is concluded that he has 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-,20 I&N Dec. 77*. 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.