



U.S. Citizenship
and Immigration
Services

PUBLIC COPY
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

L1

[Redacted]

FILE: [Redacted]
MSC-05-237-15771

Office: LOS ANGELES

Date: JAN 22 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. 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. 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 stated that he has resided continuously in the United States since January 1981. The applicant stated that he believes he has presented sufficient evidence to prove he resided in the United States throughout the requisite period. The applicant attempted to explain the inconsistencies between multiple affidavits provided by individual affiants. The applicant stated that he believes the other evidence he submitted was sufficient to establish that he resided in the United States throughout the requisite period.

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)(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).

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 submitted evidence is not relevant, probative, and credible.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on May 25, 2005. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant listed the following addresses during the requisite period: [REDACTED] Los Angeles, California from January 1981 to January 1985; [REDACTED] Santa Ana, California from January 1985 to August 1985; [REDACTED] Anaheim, California from August 1985 to January 1986; [REDACTED] Santa Ana, California from January 1986 to present. Changes have been made to the list of residences in red pen that have not been initialed by the applicant. Specifically, the [REDACTED] address has been crossed out, and the [REDACTED] period of residence has been changed to read January 1985 to August 1986. At part #33 where applicants were asked to list all employment in the United States since entry, the applicant listed the following positions: Self-employed landscape and

construction from January 1981 to July 1988; and maintenance at Anaheim Memorial Hospital from March 1982 to July 1988.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided voluminous documentation. Documents relating to the requisite period include copies of Forms W-2, an account book, and an auto storage receipt; and multiple attestations.

The applicant provided a copy of a Notice of Stored Vehicle dated August 5, 1981. This notice indicates the applicant's vehicle was stored in Santa Ana, California. This tends to show the applicant was in the United States during the time surrounding August 5, 1981.

The applicant provided multiple Forms W-2. These included Forms from 1982, 1985-1986 listing Anaheim Memorial Hospital as the employer; and a Form from 1987 listing [REDACTED] as the employer. The 1982 form is inconsistent with the applicant's Form I-687 in that it lists the applicant's address as [REDACTED] although the Form I-687 indicates the applicant did not move to [REDACTED] until January 1986. The 1988 form is inconsistent with the applicant's Form I-687 in that it lists the applicant's address as [REDACTED] although the Form I-687 indicates the applicant moved from the [REDACTED] address in January 1986. These inconsistencies call into question whether the applicant actually resided in the United States during the requisite period.

The applicant submitted a copy of an account book for Crocker National Bank in California. The account book appears as if it may have been altered to list the applicant's name. The book lists bank transactions from July 28, 1983 to July 2, 1984. Considering that the book appears to have been altered and that the applicant provided no explanation of his lack of bank transaction documentation prior to and after the dates appearing on the book, the book constitutes limited evidence of the applicant's residence in the United States from July 28, 1983 to July 2, 1984.

The applicant provided multiple attestations that failed to confirm the applicant resided in the United States during the requisite period. These included the March 27, 2001 declaration from Luis [REDACTED]; the affidavit from [REDACTED]; the declaration from [REDACTED]; and the affidavit from [REDACTED] dated November 12, 2005. The applicant also provided multiple attestations in the Spanish language that will not be considered because the applicant failed to provide a certified English translation. These included unsigned and undated declarations from [REDACTED] and [REDACTED].

The applicant provided a form affidavit from [REDACTED] dated April 30, 2001. In the affidavit, the affiant stated that, to her personal knowledge, the applicant resided at [REDACTED] Los Angeles, California from 1984 to 1986; and at [REDACTED] Santa Ana, California from 1986 to present. This information is inconsistent with the applicant's Form I-687 application, where the applicant indicated he moved away from the [REDACTED] address and began living at the [REDACTED] address starting in January 1985, instead of staying at the [REDACTED] address

until 1986 as indicated on the affidavit. This inconsistency calls into question Ms. Hernandez' ability to confirm the applicant's residence in the United States during the requisite period.

The applicant provided a form affidavit from [REDACTED] dated April 30, 2001. In the affidavit, the affiant stated that, to his personal knowledge, the applicant resided at [REDACTED], Los Angeles, California from 1983 to 1986; and [REDACTED], Santa Ana, California from 1986 to present. This information is inconsistent with the applicant's Form I-687 application, where the applicant indicated he moved away from the [REDACTED] address and began living at the [REDACTED] address starting in January 1985, instead of staying at the [REDACTED] address until 1986 as indicated on the affidavit. This inconsistency calls into question [REDACTED]'s ability to confirm the applicant's residence in the United States during the requisite period.

The applicant provided a declaration from [REDACTED] which states that the applicant worked for Casa Blanca Furniture from January 1988 through December 1988 as a general carpenter. This declaration is inconsistent with the information on the applicant's Form I-687, where the applicant failed to list employment with Casa Blanca Furniture when asked to list all employment in the United States. This inconsistency calls into question [REDACTED]'s ability to confirm the applicant's residence during the requisite period. In addition, the declaration does not conform to regulatory standards for letters from employers as stated in 8 C.F.R. § 245a.2(d)(3)(i). Specifically, the declaration does not include the applicant's address at the time of employment, whether or not the information was taken from official company records, where the records are located, and whether the service may have access to the records.

The applicant provided a declaration from [REDACTED] in which [REDACTED] stated that he first met the applicant in 1988. [REDACTED] stated that he knew the applicant because he was living in the applicant's house in Santa Ana, California, "but also, I met him since we lived in Mexico." This declaration does not specifically confirm the applicant resided in the United States during the requisite period.

The applicant provided a form affidavit from [REDACTED] dated April 30, 2001. In the affidavit, the affiant stated that, to his personal knowledge, the applicant resided at [REDACTED], Santa Ana, California from 1987 to present.

In denying the application the director noted 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.

On appeal, the applicant stated that he has resided continuously in the United States since January 1981 and he attempted to explain the inconsistencies between multiple affidavits provided by individual affiants. He stated, ". . . the information is a little different [in] the way [it] was redacted by [sic] who did it and those [people did not] verify and [sign] and I did the same; but the correct information is on the affidavits that were submitted with the Form I-687." This explanation is found to be insufficient to overcome the inconsistencies among the affidavits

presented by the applicant. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). In this case, the applicant has failed to submit independent, objective evidence to explain the inconsistencies identified by the director.

In summary, the applicant has provided contemporaneous evidence of residence in the United States relating to the requisite period in the form of an account book relating to July 28, 1983 to July 2, 1984. The applicant provided Forms W-2 for 1985-1987. He also provided Forms W-2 for 1982 and 1988 that are inconsistent with his Form I-687 application. The applicant also submitted a Notice of Stored Vehicle from August 1981. The applicant provided multiple attestations that do not confirm the applicant resided in the United States during the requisite period, appear in a foreign language and are not accompanied by a certified English translation, or are inconsistent with the applicant's Form I-687 application.

The March 27, 2001 declaration from [REDACTED] the affidavit from [REDACTED] the declaration from [REDACTED] the affidavit from [REDACTED] dated November 12, 2005; and the declaration from [REDACTED] all fail to confirm the applicant resided in the United States during the requisite period. The unsigned and undated declarations from [REDACTED] and [REDACTED] are not accompanied by certified English translations. The affidavit from [REDACTED] the affidavit from [REDACTED] dated April 30, 2001, and the declaration from [REDACTED] are inconsistent with the applicant's Form I-687 application. The applicant has no credible evidence of his residence in the United States for the 18-month period from January 1981 to June 1983, and the 17-month period from August 1984 to January 1986.

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 contradictions between the applicant's written statements and the supporting documents he provided, and given his reliance upon documents with minimal probative value to establish his residence for much of the requisite period, 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.