

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

Lj

FILE: [REDACTED]
MSC-05-244-13887

Office: LOS ANGELES

Date: OCT 16 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 director noted that the applicant, during his interview on December 6, 2005 with immigration officials, testified under oath that he did not visit any Immigration and Naturalization Service office (INS), now Citizenship and Immigration Services (CIS) during the registration for amnesty period. The director also found that the affidavits submitted by the applicant were either dated beyond the requisite period or were lacking in detail. 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 states that he did apply for the amnesty program and that his statements should be contained in the transcripts from his immigration interview. The applicant also states that he did provide valuable evidence sufficient to establish his eligibility for temporary resident status, and that the director has failed to articulate why the evidence was insufficient or not credible.

Although the district director infers from his decision that the applicant had not established that he was eligible for class membership pursuant to the CSS/Newman Settlement Agreements, the district director treated the applicant as a class member by adjudicating the Form I-687 application. Consequently, the applicant has neither been prejudiced by nor suffered harm as a result of the district director's finding that the applicant had not established that he was eligible for class membership. Therefore, the AAO will adjudicate the applicant's appeal as it relates to his admissibility and his claim of continuous residence in the United States since prior to January 1, 1982.

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 June 1, 2005.

The applicant submitted as evidence copies of rent receipts dated 1986 and February of 1987. He also submitted a copy of his IRS Form W-2, Wage and Tax Statement for the 1985 tax year. Although these documents are some evidence of the applicant's presence in the United States, they are insufficient to show his continuous unlawful residence in the United States throughout the requisite period. The applicant submitted a copy of a pay statement dated September 21, 1981; however, this document does not identify the applicant as the payee and therefore, is irrelevant to establishing the applicant's residence in the United States during the requisite time period. The applicant submitted copies of his translated birth certificate and letters of employment that are dated subsequent to the requisite period and will, consequently, not be considered as relevant evidence in this case.

The applicant submitted the following attestations:

An un-notarized affidavit dated May 10, 2005 from [REDACTED] in which he stated that the applicant is the brother of his brother-in-law and that the applicant lived in Orange, California from 1981 to 2005. Here, the declarant fails to indicate when he met the applicant, the frequency with which he saw the applicant, or any other detail that would lend credence to his claimed knowledge of the applicant and the applicant's residence in the United States during the requisite period. It is also noted that the applicant did not indicate on his Form I-687 application that he resided in Orange, California during the time period indicated by the affiant. Because the declaration is inconsistent with statements made by the applicant and because it is significantly lacking in detail, it can be afforded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

- An affidavit dated October 22, 1993 from [REDACTED] in which he stated that he and the applicant worked together as laborers from March of 1981 to November of 1981. The affiant also indicated that the applicant resided in Sylmar, California from March of 1981 to November of 1981. Here, the affiant's statement is inconsistent with the statement made by [REDACTED]. The affiant has also failed to indicate who his employer was in 1981. Although the affiant stated that he worked with the applicant for nine months in 1981, he fails to show that he has knowledge of the applicant's whereabouts and circumstances of his residence in the United States during the requisite period.
- A letter from [REDACTED] who stated that he is the owner of [REDACTED] Angeles, California and that the applicant lived at that address from February 1, 1982 to April 1, 1985. The declarant failed to submit evidence such as rent receipts or cancelled checks to substantiate his claim. It is also noted that this declaration is inconsistent with statements made by [REDACTED] above. Because the

declaration is lacking in detail, it can be afforded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

- An employment letter dated October 11, 1991 from [REDACTED] in which he stated the applicant was working with his brother on a project as a laborer and painter's helper from July of 1982 to November of 1982. He stated that the applicant was on various maintenance projects as an employee of different subcontractors, including Freeman Real Estate who ceased to exist in 1984. He also stated that on occasion the applicant would work for the Hannon-Homes company as a laborer, and most recently as a painter. He further stated that the applicant was paid in cash. Here, the attestation does not conform to regulatory standards for attestations by employers. Specifically, the affiant does not specify the address(es) where the applicant resided throughout the claimed employment period, nor does the declarant indicate whether the employment information was taken from company records. Neither has the availability of the records for inspection been clarified. 8 C.F.R. § 245a.2(d)(3)(i). Here, the record does not contain copies of pay statements, personnel records, Internal Revenue Service records, W-2 Forms, certification of filing of Federal income tax returns, or time cards that pertain to the requisite period to corroborate the assertions made by the declarant. Because this declaration does not conform to regulatory standards, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.
- An affidavit dated April 13, 2005 and a declaration dated October 3, 1993 from [REDACTED] of So-Cal Painting in which he stated that he has known the applicant since 1983, and that the applicant has worked for him on and off from 1983 to 1993. He also indicated that the applicant resided in Van Nuys, California from 1982 to 1988. He included a copy of his business card from So-Cal Painting. Here, the attestation does not conform to regulatory standards for attestations by employers. Specifically, the affiant does not specify the address(es) where the applicant resided throughout the claimed employment period, nor does the affiant specify the applicant's dates of employment. The affiant fails to indicate whether the employment information was taken from company records. Neither has the availability of the records for inspection been clarified. 8 C.F.R. § 245a.2(d)(3)(i). Here, the record does not contain copies of pay statements, personnel records, Internal Revenue Service records, W-2 Forms, certification of filing of Federal income tax returns, or time cards that pertain to the requisite period to corroborate the assertions made by the affiant. Because the attestations do not conform to regulatory standards, they can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

In denying the Form I-687 application, the director noted that the applicant had submitted evidence that was not sufficient to demonstrate his eligibility for temporary resident status.

On appeal, the applicant asserts that the director had failed to articulate why the evidence submitted was insufficient or not credible. The applicant reasserts his claim of eligibility for temporary resident status. He submits on appeal evidence previously submitted.

In the instant case, the applicant has failed to provide sufficient, credible and probative evidence to establish his continuous unlawful residence in the United States during the requisite period. He has failed to overcome the grounds for denial raised by the director. The applicant submitted attestations that are inconsistent with statements he made and statements made by other declarants. The attestations are contradictory to one another and are also lacking detail.

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 statements made by other declarants and are lacking in detail, 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.