

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

L,

FILE: [REDACTED]
MSC-06-061-11563

Office: NEW YORK Date:

OCT 17 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.

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, New York. 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. Specifically, the director stated that the evidence the applicant submitted in support of his application, when considered with his testimony, did not satisfy his burden of proof. Therefore, the director determined the applicant was not eligible to adjust to temporary resident status pursuant to the CSS/Newman Settlement Agreements and denied the application.

On appeal, the applicant submits a brief and additional evidence for consideration.

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) 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 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 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 a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to Citizenship and Immigration Services (CIS) on November 30, 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 indicated he had resided both at [REDACTED] in Apartment [REDACTED] and at [REDACTED], in apartment [REDACTED] in Yonkers, New York. However, the applicant failed to indicate when he resided at either address. At part #31 where the applicant was requested to list all affiliations and associations with churches and organizations, he did not indicate that he had any affiliations or associations with such entities. At part #32 where the applicant was asked to list all of his absences from the United States, he indicated that was absent from the United States once during the requisite period, when he traveled to the Ukraine, leaving and returning in the month of March 1987. At part #33, where the applicant was asked to list all of his employment in the United States since he first entered, he stated that he was a self-employed painter in New York. He failed to indicate when this employment began.

Also in the record are the notes taken by a CIS officer at the time of his interview regarding his Form I-687 application. These notes indicate that at the time of his interview, the applicant

stated that he previously resided on [REDACTED] in Yonkers, but he could not remember the street number associated with this address. It is noted that this does not correspond with either address of residence provided by the applicant on his Form I-687.

The applicant has the burden of proving by a preponderance of the evidence that he has resided in the United States for the requisite period. 8 C.F.R. § 245a.2(d)(5). To meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. 8 C.F.R. § 245a.2(d)(6). The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that an applicant may submit to establish proof of continuous residence in the United States during the requisite period. This list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts or letters. An applicant may also submit any other relevant document pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The regulation at 8 C.F.R. § 245a.2(d)(3)(v) states in pertinent part that attestations by churches, unions or other organizations can be considered credible proof of residence if such documents: identify the applicant by name; are signed by an official whose title is shown; show inclusive dates of membership; state the address where the applicant resided during his or her membership period; include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationary; establish how the author knows the applicant; and establish the origin of the information being attested to.

Prior to the date the director of the National Benefits Center issued his NOI, the applicant submitted the following evidence that is relevant to his claim that he resided continuously in the United States for the duration of the requisite period:

An affidavit from [REDACTED] that is dated December 13, 2005. The affiant states that he is aware that the applicant entered the United States before January 1, 1982.

- An affidavit from [REDACTED] who states that she is aware that the applicant entered the United States before January 1, 1982.

The director of the National Benefits Center issued a NOI in which he stated that the applicant failed to submit evidence of the following: that he entered the United States before January 1, 1982 and then resided in a continuous unlawful status except for brief absences from before 1982 until the date he (or his parent or spouse) was turned away by Immigration and Naturalization Service (INS) when they tried to apply for legalization; that he was continuously physically present in the United States except for brief, casual and innocent departures from November 6, 1986 until the date that he (or his parent or spouse) tried to apply for legalization; and that he was admissible as an

immigrant. The director granted the applicant 30 days within which to submit additional evidence in support of his application.

In response to the NOI, the applicant submitted the following additional evidence that is relevant to his claim that he resided continuously in the United States for the duration of the requisite period:

- A declaration from [REDACTED] who states that she has known the applicant for a long time. However, the declarant fails to state when she met the applicant, where she met him, whether she met him in the United States or whether she knows if he resided in the United States during the requisite period. Therefore, this declaration carries no weight as evidence that he resided in the United States during the requisite period.
- An affidavit from [REDACTED] dated October 19, 2006. The affiant submits a photocopy of his New York Driver's License and states that he has known the applicant for a long time. He states that he met the applicant in 1986 and that they were neighbors on [REDACTED] at that time. It is noted that the applicant did not state that he resided on [REDACTED] on his Form I-687. The declarant fails to state the frequency with which he saw the applicant during the requisite period or whether there were periods of time during that period when he did not see the applicant. Because this affiant states that he met the applicant in 1986, his affidavit carries no weight as evidence that the applicant resided in the United States before that time.
- A declaration signed by [REDACTED], who asserts that the applicant joined his church in December 1981 and has been an active member of the church since that time. However, this declaration fails to state the applicant's address at the time of his membership, or to state how [REDACTED] was able to determine the date the applicant became a member of the church. Further, it is noted that at part #31 of his Form I-687 application, the applicant did not indicate that he was a member of any churches. Because of this inconsistency, and because this declaration is significantly lacking with regards to the criteria that the regulation at 8 C.F.R. § 245a.2(d)(3)(v) states attestations from churches must adhere to, it can only be accorded very minimal weight as evidence that the applicant resided in the United States during the requisite period.
- A document from [REDACTED] dentist, who states that the applicant had a dental visit on October 24, 1985.

It is noted that the applicant also submitted evidence of his residence in the United States subsequent to the requisite period. That evidence is not relevant to his claim that he resided continuously in the United States during the requisite period. Therefore, it is not discussed here.

The director denied the application for temporary residence on January 24, 2007. In denying the application, the director found that the applicant did not prove, by a preponderance of the evidence, that he entered the United States prior to January 1, 1982 then resided in the United

States for the duration of the requisite period. The director noted that at the time of the applicant's interview, the applicant could not recall any of the addresses at which he resided in the United States during the requisite period. The director also noted that the applicant's Form I-687 did not state when the applicant had resided at particular addresses in the United States and that the applicant did not submit proof of his claimed absence from the United States in 1987. Therefore, the director found that the applicant did not meet his burden of establishing that he resided continuously in the United States for the duration of the requisite period.

On appeal, the applicant states that the denial of his application is an abuse of discretion and is contrary to the law. He asserts the following:

- That affiants from whom he submitted evidence have personal knowledge of the events and circumstances of his residence, particularly noting affiant [REDACTED], who he asserts was his neighbor during the requisite period.
- He previously provided specific addresses and dates associated with his residence in the United States. In saying this, he asserts that he resided at [REDACTED] in Yonkers, New York from November 1981 to December 1993 and states that he provided this address on his Form I-687. It is noted that the record reflects that this address does not appear in the applicant's Form I-687. The applicant states that during his interview he stated that he first resided at [REDACTED] in Yonkers New York, but that he could not remember the house number at that time.
- It is not reasonable to expect that the applicant would have proof of his travel to the Ukraine in 1987, as this took place 20 years ago. He asserts that he has provided indirect evidence of his absence in the testimony of affiants.
- The affiants and declarants from whom he provided evidence provided their addresses and phone numbers and therefore their affidavits and declarations were verifiable.

With this statement, the applicant resubmits previously submitted evidence and also submits the following additional evidence in support of his application:

- An affidavit from [REDACTED], who states that he personally knows that he has known the applicant since 1993. Because this affiant states that he met the applicant subsequent to the requisite period, this affidavit is not relevant to the applicant's residence in the United States during the requisite period.
- An affidavit from [REDACTED] who states that he has known the applicant for a very long time. Because this affiant does not state when he met the applicant or indicate that he personally knows that the applicant resided in the United States during the requisite period, this affidavit carries no weight as evidence of the applicant's residence in the United States during the requisite period.

A second affidavit from [REDACTED] that was notarized on February 20, 2007. The affiant states that he was the applicant's neighbor in 1986. The affiant state that he is aware that the applicant was absent from the United States in March 1987 and provides details regarding the nature of his shared interests with the applicant.

A second affidavit from [REDACTED] that was notarized on February 20, 2007. The affiant states that he has known the applicant since 1981. He asserts that he is a frequent guest in the applicant's home. However, though the affiant states that he has known the applicant since 1981, he does not state where he first met the applicant or indicate that he met him in the United States. He does not state the frequency with which he saw the applicant during the requisite period or state that he knows that the applicant resided in the United States from a date before January 1, 1982.

In summary, though the applicant has provided evidence of his residence in the United States, his evidence relating to his residence during the period from before January 1, 1982 is significantly lacking. The AAO notes that the director incorrectly stated that the applicant could not remember his addresses in the United States in the requisite period at the time of his interview. Here, the record reflects that the applicant did state the name of the street that he resided on. However, the name of the street that he provided was not consistent with either of the addresses the applicant stated he had resided on in his Form I-687. Further, the applicant has failed to submit any evidence that he resided at this address prior to 1986.

In this case, 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. Given the lack of credible supporting documentation pertaining to the entire requisite period, it is concluded that he has failed to establish by a preponderance of the evidence that he has continuously resided in an unlawful status in the United States for the requisite period 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.

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