

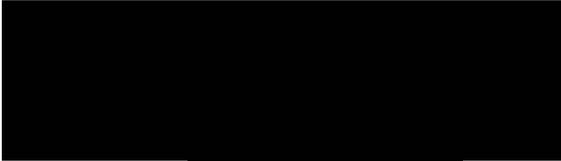


U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

61



FILE: [Redacted]
MSC-04-290-10480

Office: LOS ANGELES

Date:

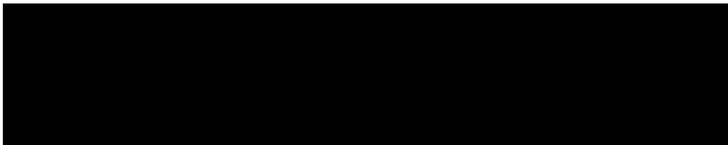
MAY 04 2009

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:



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. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed or rejected, 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.

John F. Grissom
Acting 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 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 (together comprising the I-687 Application). The director denied the application, finding that the evidence submitted was not credible, and thus insufficient to establish eligibility for temporary resident status.

On appeal, the applicant asserts that he has submitted sufficient credible evidence to support his claim of continuous residence in the United States since before January 1, 1982 and throughout the requisite period. Further, the applicant states that he is admissible, and thus eligible for the benefit sought since he has not been convicted of any violation that constitutes a misdemeanor or a felony in the United States.

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)(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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.2(d)(6).

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, "[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 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 (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 furnished sufficient credible evidence to meet his burden of proving by a preponderance of the evidence that he has resided in the United States continuously since before January 1, 1982 and throughout the requisite period.

As evidence that he has resided in the United States continuously since before January 1, 1982 and throughout the requisite period, the applicant submitted a photocopy of his California driver's license and state identification. The state identification was issued on August 23, 1983, valid until 1988. The driver's license is valid from November 1, 1985 to 1989. By themselves, the state identification and the driver's license are not probative as evidence of the applicant's continuous residence in the United States throughout the requisite period because they have not been certified or authenticated by the California Department of Motor Vehicle (DMV).

The applicant also submitted a letter from his current employer and seven affidavits from his friends to support his application. [REDACTED] claims in his letter that the applicant has been working at [REDACTED], a neighborhood kitchen, since 1980. To be considered credible and probative as evidence of the applicant's residence in the United States, letters from employers must contain specific information as prescribed by the regulation at 8 C.F.R. § 245a.2(d)(3)(i). Specifically, the employers must state the exact period of the applicant's employment with the company, the address or addresses of the applicant during his employment, the applicant's duties with the company, whether or not the information was taken from official company records, where such records are located, and whether USCIS may have access to the records. Here, the

letter from [REDACTED] contains no detailed information as prescribed by the regulation, and thus it has minimal weight as evidence of the applicant's continuous residence in the United States throughout the requisite period.

The seven affiants generally claim to have worked together with the applicant since 1980 and throughout the requisite period. In response to the director's intent to deny, many of the affiants provided their telephone numbers and photocopies of their government-issued identification received during the requisite period. None of them, however, provides detailed information about where the applicant lived in the United States during the requisite period or offers other details about the applicant's life in the United States to establish the credibility of their assertions. To be considered probative and credible, affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period; their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Because these affidavits lack specific detail concerning the applicant's residence in the United States, they lack probative value and have minimal weight as evidence of the applicant's continuous residence in the United States throughout the requisite period. Taken individually and together, the evidence submitted does not establish by a preponderance of the evidence that the applicant has resided in the United States continuously throughout the requisite period.

The absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period and the lack of detail in the record detract 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, it is concluded that the applicant 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.

Beyond the decision of the director, the applicant has not established his admissibility. In response to the director's request for certified copies of his criminal dispositions, the applicant submitted a certified copy of the Culver City police record (Booking No. [REDACTED]) indicating that he was booked on April 27, 1989 and charged with a violation of California Penal Code Section 487.1, grand theft. A second record from the Culver City police record (Booking No. [REDACTED]) indicates that the applicant was booked on May 22, 1989 and charged with receiving stolen property. A disposition record indicates that on July 17, 1989 the court dismissed the charge of receiving stolen property. The records are not clear about the disposition of the grand theft charge. The applicant also submitted a certified letter from the Superior Court of California, County of Los Angeles. The letter was issued to [REDACTED] with a date of birth of October 25, 1967. The applicant's birth certificate indicates that his date of birth is November 13, 1966. Other records indicate that the applicant was criminally charged using a

date of birth of July 28, 1961 and an alias of [REDACTED]. The letter from the California Superior Court does not clear the applicant's criminal history using the alias name and dates of birth. As the applicant's criminal history has not been resolved, it cannot be determined that he is admissible. For this additional reason the application may not be approved.

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