

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

[REDACTED]

LI

FILE: [REDACTED]  
MSC-05-312-13976

Office: DALLAS

Date:

SEP 22 2009

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:

[REDACTED]

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, Dallas, 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 (together comprising the I-687 Application). The director denied the application, finding that the applicant had failed to meet his burden of proving by a preponderance of the evidence that he entered the United States before January 1, 1982 and had thereafter resided continuously in the United State until he or his parent filed or attempted to file the application for temporary resident status.

On appeal, counsel for the applicant contends that the applicant has submitted sufficient credible evidence to support his claim of continuous presence and residence in the United States since before January 1, 1982 and throughout the requisite period. Counsel further claims that the director has not considered the evidence in its totality and has wrongfully ignored some evidence.

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.

The principal issue in this proceeding is whether the applicant has furnished sufficient credible evidence to show that he entered the United States before January 1, 1982 and has thereafter resided continuously in the United States until he or his parent filed or attempted to file the application for temporary resident status.

As evidence of his continuous residence in the United States since before January 1, 1982, the applicant submitted five letters and three affidavits. The letter from St. Cecilia's Catholic Church states that the applicant is a member. Similarly, the letter from Santa Clara Catholic Church indicates that the applicant is a parishioner. Neither letter specifically states when the applicant became a member or how long he has been a member in either church. The letter from Our Lady of Lourdes Catholic Church states that the applicant regularly attended the church before he and his wife became registered members in 1995, but the author does not specifically mention when the applicant initially started to attend the church. When contacted by United States Citizenship and Immigration Services (USCIS), personnel of the Our Lady of Lourdes Catholic church stated that the applicant began regularly attending the church in 1995. No additional evidence has been submitted to verify or confirm the applicant's membership in any of these churches during the requisite period. The AAO further observes that none of these letters includes specific details about the applicant's membership in the church as prescribed by the regulations at 8 C.F.R. § 245a.2(d)(3)(v). Specifically, none states the inclusive date of the applicant's membership, the address or addresses where the applicant resided during his membership period, how the author knows the applicant, and where he acquired the information

relating to the applicant's membership in his organization. The applicant additionally failed to list his membership or affiliation in a church or other organization at part #31 of his Form I-687 application. None of the letters mentioned above is probative as evidence of the applicant's residence in the United States during the requisite period.

claims in his letter that he first met the applicant in March 1982, when the applicant's father worked at his ranch. [REDACTED] similarly states in his affidavit that he has known the applicant for the past 25 years or since 1982. Neither describes with any detail how he first met the applicant in the United States or how he dates the beginning of his acquaintance with the applicant in 1982. Neither states with specificity where the applicant resided or worked during the requisite period or provides other details about the applicant's life during that period. To be considered probative and credible, a witness affidavit or statement must do more than simply state that a witness 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 witness statements are seriously lacking in relevant detail, they lack probative value and have only minimal weight as evidence of the applicant's eligibility for temporary resident status.

[REDACTED] claims in his letter that he has known the applicant for over 17 years or since 1990. The letter from [REDACTED] is not relevant and will not be considered since it does not relate to the requisite period.

claims in his affidavit that he has known the applicant since he was young and that he often played soccer together with the applicant. [REDACTED] the applicant's mother, indicates in her affidavit that she came to the United States with her whole family in December 1981. Both [REDACTED] and [REDACTED] provide the addresses where the applicant resided from 1981 through 1988. Neither describes with any detail what the applicant did with his time, his activities, friendships, interaction with the community or other particulars of his residence in the United States during the requisite period. The lack of detail in either affidavit is significant, considering that the applicant was only 13 or 14 years of age in 1981 when he first came to the United States. Additionally, simply listing the address where the applicant lived during the requisite period without providing any detail about the events and circumstances of the applicant's life in the United States during the requisite period does not establish the reliability of the assertions and does not establish his continuous residence in the United States since before January 1, 1982. Neither affidavit is probative as evidence of the applicant's residence in the United States during the requisite period.

Upon a *de novo* review, the AAO agrees with the director that individually and together, the evidence submitted does not establish the applicant's continuous residence in the United States since before January 1, 1982 and 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 coupled with the lack of detail in the evidence submitted seriously 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.

It is noted that according to a report based upon the applicant's fingerprints, he was convicted of making a false claim to U.S. citizenship and illegal entry in 1990.

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