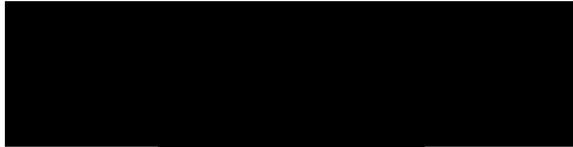


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FILE: [REDACTED]
MSC 06 088 17178

Office: LOS ANGELES

Date: **AUG 29 2007**

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.

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, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director determined the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that he attempted to file a Form I-687, Application for Status as a Temporary Resident, with the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS) in the original legalization application period of May 5, 1987 to May 4, 1988. Therefore, the district director determined that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and denied the application.

On appeal, the applicant explains that he may have become confused and provided incorrect information during his legalization interview due to the fact that his wife had just been released from the hospital on the day of the interview after having lost their baby.

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 Immigration and Nationality Act (Act), 8 U.S.C. § 1255a(a)(2).

An applicant applying for adjustment to temporary resident status must 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).

For purposes of establishing residence and presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), “until the date of filing” shall mean until the date the alien attempted to file a completed Form I-687 application and fee or was caused not to timely file, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

An alien applying for adjustment of status has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, 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. See 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.* 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 (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 from prior to January 1, 1982 through the date he attempted to file a Form I-687 application with the Service in the original legalization application period of May 5, 1987 to May 4, 1988. Here, the submitted evidence is not relevant, probative, and credible.

The record shows that the applicant submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on December 27, 2005. At part #30 of the Form I-687 application where applicants are instructed to list all residences in the United States since first entry, the applicant indicated that he resided at [REDACTED] Los Angeles, California” from 1980 to 1985 and at [REDACTED] and [REDACTED] Los Angeles, California” from 1985 to 1990.

At his interview with a CIS officer on April 26, 2005, the applicant stated that he first entered the United States without inspection in September 1980. The applicant further stated, under oath, that he returned to Mexico in September 1981, stayed with his family in Mexico for four years, and returned to the United States in 1985. The applicant signed a sworn statement certifying under penalty of perjury that the information he provided in his sworn statement was true and correct to the best of his knowledge.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted an affidavit dated November 23, 2005, from [REDACTED]. Mr. [REDACTED] stated that he had "known of the presence of [REDACTED] in the United States since the year 1980." [REDACTED] further stated that the applicant came to live with him at [REDACTED] Los Angeles, California," when he arrived in the United States.

The applicant also submitted an affidavit dated November 23, 2005, from [REDACTED]. Mr. [REDACTED] stated that he had "known of the presence of [REDACTED] in the United States since the year 1981." [REDACTED] explained that he and the applicant were from the same town in Oaxaca, Mexico, and had been friends since they were very young. However, Mr. [REDACTED] did not provide any specific, detailed, and verifiable testimony such as the applicant's addresses in the United States during the requisite period to corroborate the applicant's claim.

The applicant included an affidavit dated November 23, 2005, from [REDACTED]. Mr. [REDACTED] stated, "I have known of the presence of [REDACTED] in the United States since the year 1981." [REDACTED] further stated that he knew the applicant in Mexico when they were children and first encountered the applicant in the United States in 1981. However, Mr. [REDACTED] failed to provide any specific, detailed, and verifiable information such as the applicant's addresses in the United States during the requisite period.

The applicant also included an affidavit dated November 23, 2005, from [REDACTED]. [REDACTED] stated, "I have known of the presence of [REDACTED] in the United States since the year 1985." [REDACTED] explained that he met the applicant playing basketball in a park in Los Angeles in 1985, and the applicant told him that he had been in this country since 1981. Since [REDACTED] met the applicant in 1985, he clearly relied on second-hand information provided to him by the applicant when he stated that the applicant had been in the United States since 1981. Furthermore, [REDACTED] failed to provide any verifiable information such as the applicant's addresses in the United States during the requisite period to corroborate the applicant's claim. Therefore, [REDACTED] testimony will be given little evidentiary weight.

The applicant provided an affidavit dated December 12, 2005, from [REDACTED]. [REDACTED] stated that he had known the applicant "almost all my life and since 1985 we found each other again in Los Angeles." However, [REDACTED] failed to provide any specific, detailed, and verifiable information such as the applicant's addresses in the United States during the requisite period to corroborate the applicant's claim.

The applicant also provided an affidavit dated December 20, 2005, from [REDACTED]. [REDACTED] stated, "I have known of the arrival of my friend [REDACTED] to the United States since 1981." [REDACTED] further stated that he and the applicant speak regularly on the phone and also visit each other in person. However, [REDACTED] failed to provide any specific, detailed, and verifiable information such as the applicant's addresses in the United States during the requisite period to corroborate the applicant's claim.

The district director denied the application on April 26, 2006, because the applicant failed to establish continuous residence in the United States throughout the requisite period. The district director specifically noted in the denial decision that the applicant stated under oath during his legalization interview that he returned to Mexico in September 1981 and stayed in his country for four years, returning to the United States in 1985.

On appeal the applicant reiterates his claim of continuous residence in the United States since 1980. [REDACTED] further states:

[D]uring my interview I unfortunately was very nervous and confused. I got very confused with the dates: I responded quickly to the questions without taking time to think of what I was being asked. I just gave out dates without assurance of what I was saying. Please note that on the day of my interview my wife had been discharged from the hospital after losing our baby. I was not myself, the devastation of losing our baby that we have wanted and waited for, for over 8 years was gone, and I was much disoriented.

The applicant provides photocopies of his wife's medical records corroborating his statements on appeal. Although the events of April 26, 2006, the date of the applicant's interview, were indeed tragic, the fact remains that the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period, and has submitted attestations from only six people concerning that period, all of which lack sufficient credibility to corroborate the applicant's claim.

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 applicant's reliance upon documents with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application 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.