

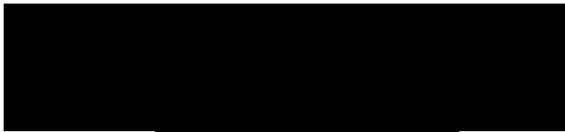
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U.S. Citizenship  
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FILE: [Redacted]  
MSC-05-040-10161

Office: LOS ANGELES

Date: **APR 30 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 "R. 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. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant appears to be represented; however, the record does not contain Form G-28, Notice of Entry of Appearance as Attorney or Representative. Therefore, the applicant shall be considered as self-represented and the decision will be furnished only to the applicant.

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 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 asserts his claim of eligibility for temporary residence status and submits affidavits as 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) 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 or her 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 November 9, 2004. 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 showed his first address in the United States to be [REDACTED] El Monte, California, from November of 1981 to February of 1988, and [REDACTED] Pomona, California, from February of 1988 to June of 1991. Similarly, at part #33, he showed his first employment in the United States to be landscaping from January of 1981 to January of 1990. The applicant did not indicate where he worked.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted copies of pay stubs, tax records, auto insurance statements, DMV statements, postmarked envelopes, utility bills, rent receipts, and identification cards all dated from 1991 through 2002. Although this is evidence of the applicant's presence in the United States since 1991, it is insufficient to corroborate his claim of continuous residence in the country since before January 1, 1982. The applicant also submitted an affidavit from [REDACTED] in which she stated that the applicant had been a tenant at [REDACTED] El Monte, California from January of 1981 to December of 1990.

Here, the applicant has failed to submit corroborating evidence such as rent receipts, cancelled checks, a lease agreement, or utility bills dated during the claimed period to substantiate the affiant's claim.

It is further noted that the applicant's date of birth is February 6, 1966, which would have made him 15 years old at the time he allegedly rented the above noted premises.

The applicant indicated on his Form I-687 application at part #30 that his first address in the United States was [REDACTED] El Monte, California, from November of 1981 to February of 1988, and [REDACTED] Pomona, California, was his address from February of 1988 to June of 1991. It is also noted that the applicant stated during an interview with immigration officers on May 30, 2006 that he arrived in the United States in December of 1981. This inconsistency calls into question the affiant's ability to confirm that the applicant resided in the United States during the requisite period. Because this affidavit contains testimony that conflicts with the applicant's testimony and with what he showed on his Form I-687, doubt is cast on assertions made in the affidavit. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). This affidavit is significantly lacking in detail and it conflicts with other evidence in the record. Therefore, only minimal weight can be afforded to it in establishing that the applicant resided in the United States during the requisite period.

In denying the application the director noted that the applicant's statement under oath, statements made by affiant [REDACTED] and information contained in his Form I-687 application are contradictory and not credible, and are therefore insufficient to establish the applicant's eligibility for the benefits sought.

On appeal, the applicant states he has submitted proof of his residence in the United States since before January 1, 1982, and that his Form I-687 application contains incorrect information. He further states that he first arrived in the United States in January of 1981, and that his residency is consistent with the statement made by the affiants. The applicant resubmitted a copy of the [REDACTED] affidavit. He also submits the following affidavits on appeal:

- An affidavit from [REDACTED] in which he stated that he has known the applicant since around 1981 and that they have maintained a very close friendship through the years. The affiant has failed to specify when in 1981 he met the applicant and under what circumstances they met. He has failed to demonstrate the frequency with which he saw the applicant during the requisite period. The affiant has not provided evidence that he himself was present in the United States throughout the requisite period. Although the affiant attested to the applicant's presence in the United States, he has failed to provide any relevant and verifiable testimony, such as the applicant's place of residence in this country during that period, to corroborate the applicant's claim of residence in the United States from prior to January 1, 1982. Because this affidavit is lacking in detail, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.
- An affidavit from [REDACTED] in which he states that he is the owner of Detroit Auto Parts located in El Monte, California, and that the applicant has been his client since or before

1981. The affiant has not submitted any documentation to substantiate such claim. He has failed to demonstrate the frequency in which he saw the applicant during the requisite period. The affiant has not provided evidence that he himself was present in the United States throughout the requisite period. Because this affidavit is lacking in detail and is not accompanied by corroborating evidence, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

- An affidavit from [REDACTED] in which he stated that he has known the applicant since 1981 and that he met the applicant at [REDACTED] El Monte, California, and that he has seen the applicant almost every week since 1981. The affiant has failed to specify when in 1981 he met the applicant, and under what circumstances. The affiant has not provided evidence that he himself was present in the United States throughout the requisite period. Although the affiant attested to the applicant's presence in the United States, he has failed to provide any relevant and verifiable testimony, such as the applicant's place of residence in this country during that period, to corroborate the applicant's claim of residence in the United States from prior to January 1, 1982. Because this affidavit is lacking in detail, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

In the instant case, the applicant has not provided sufficient, probative evidence of residence in the United States relating to the requisite period, and has submitted an attestation from one person that is inconsistent with the applicant's statements made during his interview, and with his statement on his Form I-687 application. The new affidavits from [REDACTED] and [REDACTED] lack detail, and therefore, can be accorded only minimal weight.

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 contradictory statements on his application and his 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 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.