

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



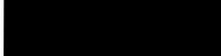
U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**



61

FILE:



Office: LOS ANGELES

Date:

**AUG 13 2008**

MSC 05 187 11239

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: 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, Los Angeles, 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. 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 that he has lived in the United States since prior to January 1, 1982 and provides additional evidence in support of his claim.

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 until the date of filing the application. 8 C.F.R. § 245a.2(b)(1).

Under the CSS/Newman Settlement Agreements, 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 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.* 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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided in the United States during the requisite time period. Here, the applicant has failed to meet this burden.

The record includes the following documentation in support of the applicant's claim of continuous residence in the United States during the relevant time period:

1. An employment letter dated March 30, 2005 from [REDACTED], who identified himself as the ex-general manager for farm labor contractor [REDACTED] Mr. [REDACTED] stated that he worked for [REDACTED] from 1975 to 1987 and on this basis he claimed to have knowledge of the applicant's employment for [REDACTED] from January 1982 until April 1986. It is noted, however, that in No. 33 of Form I-687, the applicant indicated that his employment for [REDACTED] commenced in August 1981, not January 1982, and ended in July 1987, not April 1986. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The applicant has not resolved this inconsistency. Additionally, [REDACTED]'s letter does not conform to the regulatory requirements cited in 8 C.F.R. § 245a.2(d)(3)(i), as it does not include the applicant's residential address at the time of employment. Furthermore, the AAO questions the validity of an employment letter dated in March 2005 that is written on the letterhead of a business, which, according to [REDACTED], ceased operations in September 1987.
2. A declaration dated January 4, 2006 from [REDACTED] who claimed that he and the applicant are childhood friends and that he and the applicant still keep in touch and talk on the phone "every once in a while." However, [REDACTED] failed to provide any details

about the events and circumstances of the applicant's purported residence in the United States during the statutory period.

3. A declaration dated December 23, 2005 from [REDACTED], purportedly the applicant's sister, who claimed to have known that the applicant arrived in the United States in 1981 and first resided in Calexico, California. Although [REDACTED] claimed that she and the applicant visit each other often, she failed to include any details about the events and circumstances of the applicant's purported residence in the United States during the statutory period. It is noted that [REDACTED]' statement is accompanied by a photocopied photograph in which both she and the applicant were depicted. Although the notation below the photocopy indicates that the events depicted therein took place in 1985, there is no way to corroborate this claim.
4. An undated, unnotarized document entitled "Affidavit of Witness" from [REDACTED] and a letter dated November 15, 2005 from [REDACTED], both claiming that they had known of the applicant's residence in the United States since 1981. Each individual provided a list of the four residences where he claimed the applicant resided from 1981 until 2005. In verifying the information provided by these individuals with the information provided by the applicant in No. 30 of his Form I-687, the AAO observes a number of inconsistencies. First, while the affiant stated that the applicant resided at [REDACTED], Calexico, California from 1981 until 1986, the applicant claimed that he resided at that address from 1981 until August 1987. Second, while [REDACTED] and [REDACTED] both provided two U.S. addresses for the applicant from 1987 through 2001, the applicant provided no U.S. residential address from September 1987 until April 2001. In fact, the applicant specifically stated at No. 32 of the application that he resided in Mexico from February 1988 until March 2001. The applicant has neither acknowledged nor resolved these considerable inconsistencies, which cast doubt on the veracity of both witnesses. *See Matter of Ho*, 19 I&N Dec. at 591-92.
5. An undated, unnotarized document entitled "Affidavit of Witness" from [REDACTED] who claimed that he met the applicant in 1987 and also provided two U.S. addresses for the applicant from 1987 through 2001, the time period during which the applicant claimed that he resided in Mexico. Again, the applicant has neither acknowledged nor resolved this considerable inconsistency. *See id.*
6. An affidavit dated November 14, 2005 from [REDACTED], who claimed that he knew that the applicant resided in El Centro, California from March 1982 until May 1985 and further stated that he used to see the applicant in the morning at the farmer's bus stop in El Centro, California. At best, this affidavit would only attest to the applicant's U.S. residence for three years within the statutory period. However, this affiant failed to include any details about the events and circumstances of the applicant's purported residence in the United States during the time period he was purportedly acquainted with the applicant, thereby diminishing the credibility of this statement.

7. An affidavit dated November 14, 2005 from [REDACTED] who claimed that he knew that the applicant resided in Impereal [sic] Valley, California from April 1984 until October 1986. The affiant claimed to have met and become friends with the applicant while he worked at different fields. This affiant provided no details regarding the applicant's residence or employment during the time period he claimed to have been acquainted with the applicant.
8. An affidavit dated October 14, 2005 from [REDACTED] who stated that she had known the applicant "since the 1980s" and that the Richter Investment Company has employed the applicant "from time to time" as a repair and maintenance worker. It is noted, however, that this letter of employment, does not meet the regulatory requirements cited in 8 C.F.R. § 245a.2(d)(3)(i), as [REDACTED] failed to provide the applicant's address at the time of employment, state the exact period of employment, indicate whether or not the information was taken from official company records, and disclose where records are located.
9. An affidavit dated November 16, 2005 from [REDACTED] who claimed that the applicant worked in Calexico, California from 1981 to 1986, and during that time, the applicant lived at [REDACTED], Calexico, California. The affiant claimed that he then lived with the applicant from 1987 until 1991 at [REDACTED], West Hills, California. As previously pointed out, however, the applicant claimed that he resided in Mexico from February 1988 until March 2001. **Again, the applicant has neither acknowledged nor resolved this considerable inconsistency. See id.**

Given the inconsistencies and deficiencies in each of the affidavits and written statements from third parties as discussed above, each of them can be afforded only minimal weight as evidence of the applicant's residence in the United States during the statutory period.

On August 14, 2006, the director denied the application. Although the director did not cite specific deficiencies, she determined that the documentation provided by the applicant was insufficient to establish his eligibility for temporary resident status.

On appeal, the applicant reiterates his claim and states that he paid his bills in cash and is therefore unable to provide receipts as proof of payment. The applicant also resubmitted various affidavits as well as two new affidavits that had not been previously submitted. One affidavit, dated September 7, 2006, is from [REDACTED], who claimed that she met the applicant in 1983 when he dated one of her roommates. [REDACTED] claimed that she maintained a relationship with the applicant whose brother married her daughter. It is noted that this affiant provided no details regarding the events and circumstances of the applicant's residence in the United States during the statutory period.

The other affidavit, dated September 5, 2006, was from [REDACTED] who generally reiterated the statements made by her husband in No. 9 above, claiming that the applicant worked in Calexico, California from 1981 to 1986 and subsequently came to live with her and her husband from 1987 to 1991.

As with [REDACTED] statement, the veracity of this statement is compromised by the same inconsistency regarding the applicant's residence from 1987 to 1991. *See Matter of Ho*, 19 I&N Dec. at 591-92.

Lastly, the AAO notes an inconsistency between the information provided by the applicant in Nos. 30 and 32 of his Form I-687 application. Namely, in No. 30 of the application, the applicant provided his residential address from August 1981 to August 1987 and from April 2001 through the present, thus creating the appearance of an absence from the United States commencing in September 1987. However, in no. 32 of the application, the applicant indicated that his absence from the United States commenced in February 1988. It is therefore unclear where the applicant resided from September 1987 until February 1988, and if he was, in fact, still in the United States as indicated in No. 32 of the application.

In summary, all of the documentation the applicant has provided in an effort to establish his continuous residence in the United States during the statutory period is deficient in its probative value either because of a lack of sufficient information or an overall lack of credibility. It is noted that 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. *Id.* at 591. Furthermore, 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. As previously stated, 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). Given the inconsistencies in the applicant's application and supporting documentation 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 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-*, 20 I&N Dec. 77. 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.