

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

L1

[REDACTED]

FILE:

MSC-06-101-22610

Office: LOS ANGELES

Date: **AUG 29 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. 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.

Handwritten signature of Robert P. Wiemann in black ink.

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 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 denied the application because she found that the applicant failed to establish eligibility for Temporary Resident Status pursuant to the terms of the CSS/Newman settlement agreements. Specifically, the director noted that the applicant was married in Mexico on July 16, 1983 and that the applicant registered the birth of his son in Mexico on December 3, 1984. The applicant did not list corresponding absences from the United States on his Form I-687 application and did not acknowledge these absences when he testified before an immigration officer on November 20, 2006. The director found that the applicant's testimony was not credible because of the inconsistencies between the applicant's testimony and the information contained in the marriage certificate and birth certificate.

On appeal the applicant states that he is eligible for temporary resident status and that the director's stated reasons for denying his application were incorrect and arbitrary. The applicant states that he has resided in the United States continuously since May of 1980, and that he was absent from the United States on four occasions during the requisite period. Specifically, the applicant states that he departed the United States on four occasions during the requisite period: in 1983, to get married; in December, 1984, to visit his family; in 1985; and again in June of 1987. The applicant has also submitted an additional witness affidavit and his children's school records in support of his appeal.

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)(1).

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).

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 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 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 for the duration of the requisite period. Here, the applicant has not met his burden of proof.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on January 9, 2006. The applicant submitted the following as evidence of his continuous residence in the United States throughout the requisite period:

- A statement from [REDACTED] signed May 25, 2006. The declarant states that he first met the applicant in January 1982 when they shared an apartment. The declarant further states that he resided at [REDACTED] in 1981 until 1988. However, on the Form I-687 application, the applicant indicated that he resided at [REDACTED] Angeles, California from May 1980 until June 1989. Thus, if the declarant and applicant had actually lived together at [REDACTED] when the applicant first arrived in the United States, the declarant would have met the applicant prior to 1982. This is a material inconsistency which detracts from the credibility of this statement. In addition, the statement lacks probative details such as how the declarant came to know the applicant. Given these deficiencies, this statement will be given minimal weight as evidence of the applicant’s residence in the United States during the requisite period.

- A statement from [REDACTED] dated February 20, 2006. The statement is in the form of a printed questionnaire with responses written by the declarant. The information provided by the declarant in response to some of the questions is not clear. The declarant states that he met the applicant on March 16, 1984 at 10:45 AM. In response to the question "How did you meet the applicant?" the declarant wrote: "By appointment in Birch Santa Ana but later location moved." The declarant does not provide any further detail regarding how he met the applicant or how he dates his initial acquaintance with the applicant. In response to the question, "How do you know that the applicant came to the U.S. before 01/01/1982?," the declarant wrote "about the paper proof." It is not clear from this response whether the declarant has personal knowledge of the applicant's entry into the United States or of his residence in the United States during the requisite period. The declarant also fails to provide any details regarding the nature of his relationship with the applicant or the frequency of his contact with the applicant during the requisite period. Lacking such probative details, this statement can only be given minimal weight as evidence of the applicant's residence in the United States during the requisite period.

A copy of a California state identification card issued to the applicant on September 3, 1987. The card lists the applicant's address as [REDACTED] CA, which is consistent with the information provided by the applicant on the Form I-687 application.

A copy of a bill from Southern California Gas Co. which bears the applicant's name and lists his address as [REDACTED]. The billing period is October 3, 1988 to October 31, 1988 and the "date mailed" is listed as November 2, 1988. This is inconsistent with information provided by the applicant on his Form I-687 application in that, according to the Form I-687 application, the applicant did not reside at [REDACTED] until January, 1989.

The applicant also submitted a copy of his marriage certificate and of the birth certificate of his son, [REDACTED]. The marriage certificate, dated July 16, 2003, lists the applicant's residence as [REDACTED]. The birth certificate, dated December 3, 1984, lists the applicant's residence as "Coronelas [REDACTED]". This conflicts with the applicant's claim to have resided continuously in the United States throughout the requisite period. These inconsistencies seriously detract from the credibility of the applicant's claim.

The applicant has also submitted school records for his son [REDACTED]. These documents indicate that [REDACTED] attended Wilton Place Elementary School from September 15, 1989 until August 10, 1990; Cahuenga Elementary School from April 29, 1991 until June 26, 1996; Virgil Middle School from July 2, 1996 until April 27, 1999; and Belmont High School from July 6, 1999 until June 24, 2003. These records fall outside the requisite period and therefore have no probative value as evidence of the applicant's residence in the United States during the requisite period.

In summary, the applicant has not provided sufficient evidence in support of his claim of residence in the United States relating to the entire requisite period. 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 contradictory information in the record and the applicant's reliance upon documents with little or no 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.