

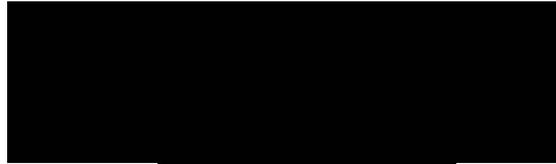
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FILE: [Redacted]  
MSC-05-365-11003

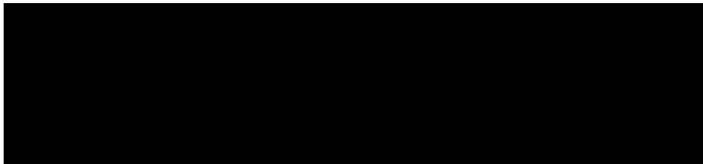
Office: LOS ANGELES

Date: DEC 02 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:



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.

  
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 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, on September 30, 2005 (together, the I-687 Application). 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, specifically noting that the applicant provided contradictory information during his interview. The director denied the application as 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, counsel submitted a Form I-694 Notice of Appeal of Decision Under Section 210 or 245A, a brief, and additional evidence. On appeal, counsel addresses the director's concerns and states that the applicant worked for one employer during the week and for another on weekends during the same time period. Counsel also states that the applicant has had "some difficulty with the English language" and explains that the applicant performed a wide range of duties during his employment at the nursing homes. As of this date, the AAO has not received any additional evidence from the applicant. Therefore, the record is complete.

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. 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 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. 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, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 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, *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. *See* 8 C.F.R. § 245a.2(d)(6). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

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 (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 entered before 1982 and continuously resided in the United States for the requisite period.

The applicant has submitted several affidavits; letters; a copy of the applicant's birth certificate; a copy of the applicant's passport; a copy of the applicant's B2 visa issued on December 2, 2000;

a copy of the applicant's Form I-94 card indicating that he entered the United States on May 21, 2002; a copy of the applicant's Brazilian identification card; a copy of the applicant's passport; a copy of the applicant's California driver's license; and a copy of the applicant's employment authorization card. The applicant's birth certificate, passport, employment authorization card, and California driver's license are evidence of the applicant's identity, but do not demonstrate that he entered before January 1, 1982 and resided in the United States for the requisite period.

Some of the evidence submitted indicates that the applicant resided in the United States after May 4, 1988 and is not probative of residence before that date. The following applies to the requisite time period:

- A form-letter affidavit from [REDACTED] dated September 2, 2005. The affiant states that he personally knows the applicant and provides addresses for the applicant from February 1981 to the present. The affiant also states that the applicant is his wife's friend. Although the affiant states that he has known the applicant since 1981, the statement does not supply enough details to lend credibility to a 24-year relationship with the applicant. For instance, the affiant does not indicate where he first met the applicant in the United States, how he dates his initial meeting with the applicant, or how frequently he had contact with the applicant. Given these deficiencies, this affidavit has minimal probative value in supporting the applicant's claims that he entered the United States prior to January 1, 1982 and resided in the United States for the entire requisite period.
- A form-letter affidavit from [REDACTED] dated September 23, 2005. The affiant states that the applicant resided at [REDACTED], Santa Barbara, California from November 1981 to January 1988. The affiant also states that the applicant is his friend. Although the affiant states that he has known the applicant since 1981, the statement does not supply enough details to lend credibility to a 24-year relationship with the applicant. For instance, the affiant does not indicate where he first met the applicant in the United States, how he dates his initial meeting with the applicant, or how frequently he had contact with the applicant. Given these deficiencies, this affidavit has minimal probative value in supporting the applicant's claims that he entered the United States prior to January 1, 1982 and resided in the United States for the entire requisite period.
- A form-letter declaration signed by [REDACTED]. The declarant states that the applicant resided at [REDACTED], San Lorenzo, California from February 1988 to November 1990. The declarant also states that the applicant is his third cousin. Although the declarant states that he has known the applicant since at least 1988, the statement does not supply enough details to lend credibility to a 17-year relationship with the applicant. For instance, the declarant does not indicate where he first met the applicant in the United States, how he dates his initial meeting with the applicant, or how frequently he had contact with the applicant. Given these deficiencies, this declaration has minimal probative value in supporting the applicant's claims that he entered the

United States prior to January 1, 1982 and resided in the United States for the entire requisite period.

- A form-letter affidavit from [REDACTED] dated November 10, 2006. The record of proceeding also contains a notarized employment letter signed by [REDACTED] and dated November 10, 2006 and a declaration dated February 7, 2007. The affiant states that applicant resided at [REDACTED], Santa Barbara, California from November 1981 to January 1988. The affiant also states that the applicant was a “contractor for [his] gardening services” from November 1, 1981 to January 31, 1988. In addition, Mr. [REDACTED] stated in his letter dated November 10, 2006 that the applicant worked at 18 of his 45 clients’ houses. Although the affiant states that he has known the applicant since 1981, the statement does not supply enough details to lend credibility to a 25-year relationship with the applicant. For instance, the affiant does not indicate where he first met the applicant in the United States, how he dates his initial meeting with the applicant, or how frequently he had contact with the applicant. In his February 7, 2007 declaration, [REDACTED] also states that the applicant worked for him from November 1, 1981 to January 31, 1988 every weekend. However, in his declaration, [REDACTED] does not provide additional information about whether the applicant worked at all 18 houses each weekend. Finally, the AAO notes that the applicant did not include this position in the Form I-687 application. Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The affiant’s letters also fails to meet certain regulatory standards set forth at 8 C.F.R. § 245a.2(d)(3)(i), which provide that letters from employers must include whether the information was taken from official company records, where such records are located and whether CIS may have access to the records (if records are unavailable, an affidavit form-letter stating that the employment records are unavailable may be accepted which shall be signed, attested to by the employer under penalty of perjury and shall state the employer’s willingness to come forward and give testimony if requested). Given these deficiencies, these documents have minimal probative value in supporting the applicant's claims that he entered the United States prior to January 1, 1982 and resided in the United States for the entire requisite period.

In addition, the record of proceeding contains a declaration signed by [REDACTED]. The declaration was submitted in response to the director’s concerns that the applicant’s statements during his interview contradict the Form I-687 with regards to his employment for Olive Garden Nursing Home. [REDACTED] states that caregivers at HomeCare Casa Rhoda have various duties including “care-giving, cooking, cleaning the house, doing laund[r]y, gardening, sweeping outside the house, calling in for the medications of the elderly, logging in and dispensing” medications. While [REDACTED]’s statements indicate that the position of

caregiver may involve many different duties, the Form I-687 states that the applicant worked as a “gardener” for Olive Garden Nursing Home and not as a caregiver. [REDACTED] statements are not probative in that they only reflect the business practices of HomeCare Casa Rhoda and not those of Olive Garden Nursing Home. The record of proceeding does not contain a letter from Olive Garden Nursing Home.

The remaining evidence in the record is comprised of the applicant’s statements and application forms, in which he claims to have entered the United States in 1981. The applicant has not submitted any additional evidence in support of his claim that he was physically present or had continuous residence in the United States during the entire requisite period or that he entered the United States in 1981.

The director denied the application for temporary residence on January 18, 2007. In denying the application, the director found that the applicant failed to establish that he entered the United States prior to January 1, 1982 or that he met the necessary residency or continuous physical presence requirements. Thus, the director determined that the applicant failed to meet his burden of proof by a preponderance of the evidence.

On appeal, counsel addresses the director’s concerns and states that the applicant worked for one employer during the week and for another on weekends during the same time period. Counsel also states that the applicant has had “some difficulty with the English language” and explains that the applicant performed a wide range of duties during his employment at the nursing homes. As noted above, 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. Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that he is eligible for the benefit sought.

In this case, the absence of sufficient credible and probative documentation to corroborate the applicant’s claim of continuous residence for the requisite period seriously detracts 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.

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