

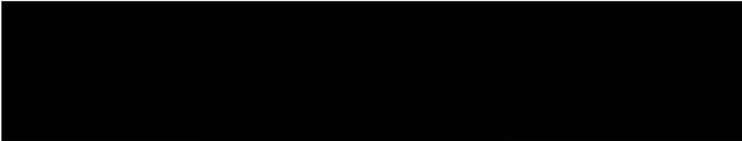
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

L1



FILE: [REDACTED]
MSC-06-063-10881

Office: National Benefits Center

Date: FEB 05 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.

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 Director, National Benefits Center. 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 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 maintains that he first entered the United States in 1981. The applicant claims that due to the passage of time he has been unsuccessful in his attempts to obtain documentary evidence of his continuous residence in the United States during the requisite period.

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)(1) 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 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 (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 submitted evidence is not relevant, probative, and credible.

The record shows that the applicant submitted a Form I-687 application and supplement to Citizenship and Immigration Services (CIS) on December 2, 2005. The applicant signed his application under penalty of perjury certifying that the information is true and correct. 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 reported his first address in the United States to be in New York, New York from September 1981 until April 1985. Similarly, at part #33, the applicant reported his first employment in the United States to be for the [REDACTED] in New York, New York from October 1981 to July 1990. This information indicates that the applicant continuously resided in the United States during the requisite period; however the applicant has failed to corroborate this testimony with credible and probative evidence.

The applicant failed to file with his application any corroborating evidence of his residence in the United States during the requisite period. The documentation provided by the applicant included his current Georgia Driver's License, the biographic page of his passport, and his Form I-94 departure record with an illegible arrival date. None of these documents relate to the applicant's residence in

the United States during the requisite period. To meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. 8 C.F.R. § 245a.2(d)(6).

On January 11, 2006, the director issued a Notice of Intent to Deny (NOID) to the applicant. The NOID provides that the applicant failed to submit documentation to establish his eligibility for Temporary Resident Status. The applicant was afforded thirty (30) days from the date of the notice to provide further evidence in support of his application. The applicant responded to the NOID by providing the following documentation: Passport; Driver's License; Form I-94 Departure Record (original); Utility Bills; Car Maintenance Invoice; Auto Insurance Estimate; Rental Car Agreement; and Pay Stubs. However, these documents are all dated outside the requisite period of continuous residence. Consequently, they are of no probative value in establishing the applicant's residence in the United States during the requisite period.

In denying the application the director noted that the applicant neglected to provide any evidence of his entry into the United States prior to January 1, 1982 and subsequent unlawful residence. The director concluded that the applicant failed to meet his burden of proving by a preponderance of the evidence that he has resided in the United States for the requisite period.

On appeal the applicant asserts that he has unsuccessfully attempted to obtain supporting documentation of his residence in the United States during the requisite period. The applicant provides the following explanation:

I tired to contact the company I first work[e]d for in Brewster N.Y. but found out they no longer exist . . . I am unable to show you any link between the American Meats and Seafood Company which operated in the 1980's and I. I can only testify in good faith that I did work for that company for a full year in Brewster (Putnam county) N.Y. back in 1981.

This explanation is insufficient because it is inconsistent with information contained in the applicant's Form I-687 application, which provides that the applicant was employed with the [redacted] in New York, New York from October 1981 until July 1990. There is no indication on the application of the applicant's employment with the American Meats and Seafood Company located in Brewster, N.Y.

The applicant has been given the opportunity to satisfy his burden of proof with a broad range of evidence pursuant to 8 C.F.R. § 245a.2(d)(3). The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that may be provided to establish proof of continuous residence in the United States during the requisite period. This list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts, or letters. An applicant may also submit "any other relevant

document” such as corroborating affidavits or letters. See 8 C.F.R. § 245a.2(d)(3)(vi)(L). Despite being provided the opportunity to satisfy his burden of proof with this broad range of evidence, the applicant has neglected to furnish any documentation to corroborate his residence in the United States during the requisite period. The applicant’s failure to provide any other evidence to establish his continuous residence in the United States during the requisite period renders a finding that the applicant has failed to satisfy his burden of proof, as required by 8 C.F.R. § 245a.2(d)(5). The applicant has not submitted sufficient evidence to establish that his claim is “probably true” pursuant to *Matter of E-M-*, *supra*.

Moreover, the record contains information that is inconsistent with the applicant’s assertion that he has continuously resided in the United States during the requisite period. On July 16, 1993 the applicant filed a Form I-589 Application for Asylum. The applicant signed this application under penalty of perjury declaring that the information is true and correct to the best of his knowledge and belief. On May 25, 1994, the applicant again signed this application before an immigration officer swearing that the contents of the application are true to the best of his knowledge. The applicant provided on this application that his first arrival in the United States was on August 28, 1990¹, which is inconsistent with the applicant’s claim of continuous residence in the United States since September 1981.

Furthermore, the applicant concurrently filed with the Form I-589 application a signed Form G-325A, Biographic Information Sheet, in which he indicated that he was employed with [REDACTED] Travel Agency in Yaounde, Cameroon from January 1984 until January 1988 and resided in Yaounde, Cameroon from March 1984 until August 1990. This information is also inconsistent with the applicant’s claim of continuous residence in the United States during the requisite period.

The inconsistencies found in the applicant’s record seriously undermine the credibility of his claim of residence in the United States for the requisite period. Doubt cast on any aspect of the evidence may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an 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. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

In conclusion, the absence of 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 numerous contradictory statements and his reliance upon documents with no probative value, it is concluded that he has failed to establish continuous

¹ At part A, #12, of the Form I-589 application, the applicant responded that his arrival in the United States was on August 28, 1990. At part D, #24, of the Form I-589 application, the applicant responded that he has never before traveled to the United States.

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.