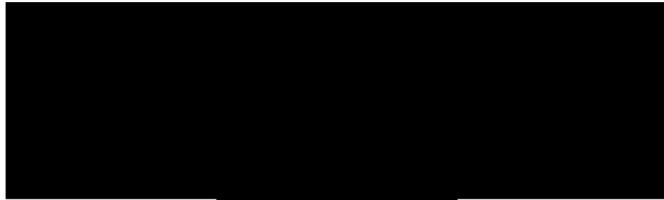




U.S. Citizenship
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FILE: [Redacted]
MSC 05 348 10794

Office: NATIONAL BENEFITS CENTER

Date: **FEB 28 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, on September 13, 2005. 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 observed that the applicant had not provided any evidence of residence in the United States relating to the relevant period. 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, the applicant submits three letters in support of his application from persons claiming to have known him during the requisite period. He states that it has been difficult to locate people who knew him to be residing in Madera, California during this period, as he currently resides in Georgia.

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).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "until the date of filing" shall mean 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).

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 continuously resided in the United States in an unlawful status during 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 a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to Citizenship and Immigration Services (CIS) on September 13, 2005. 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 indicated that he resided at "various addresses" in Calhoun, Georgia from April 1981 until December 1987, and subsequently resided in Mexico from December 1987 until June 2000. The applicant was born in December 1974 and thus he would have been between the ages of 6 and 13 during the claimed period of residence.

The applicant has the burden of proving by a preponderance of the evidence that he has resided in the United States for the requisite period. 8 C.F.R. § 245a.2(d)(5). 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). The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that an applicant may submit 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 pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The only evidence the applicant submitted in support of his application was a copy of his Mexican birth certificate accompanied by an English translation. On November 17, 2005, the director issued a Notice of Intent to Deny (NOID) the application, advising the applicant that he had 30 days to submit evidence in support of his claim that he meets the eligibility requirements for temporary resident status.

In response, the applicant submitted a letter dated December 15, 2005, in which he stated that he had located a few contacts, but that he would require more time to provide the evidence requested.

The director denied the application on August 21, 2006, noting that the applicant had submitted no additional evidence as of that date. Accordingly, the director concluded that the applicant had not established his eligibility for temporary residence under Section 245A of the Act. As noted above, 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).

The applicant now submits the following evidence on appeal:

- A notarized letter dated September 8, 2006 from [REDACTED] who states that she has known the applicant since 1980 and that he resided at her home located at [REDACTED], Madera, California from 1980 to 1994. She states that the applicant "worked in agricultural labor year after year" while residing with her. It is noted that the applicant indicated on his Form I-687, which he signed under penalty of perjury, that he first resided in the United States in April 1981, not in 1980. He stated that he lived in Calhoun, Georgia during the requisite period and indicated no addresses in California. He stated he resided in Mexico from December 1987 until 2000, which contradicts [REDACTED] statement that he lived with her until 1994. He also indicated on his Form I-687 that he did not work in the United States prior to 2002. Because [REDACTED] statement is wholly inconsistent with the applicant's own testimony, it is not credible and will not be given any evidentiary weight.
- A notarized letter dated September 15, 2006 from [REDACTED] a resident of Stockton, California. [REDACTED] states that he has known the applicant since 1982, that he met him working in the fields during the work season, and regularly saw him during work seasons until 1996. Given that the applicant was 8 years old in 1982, [REDACTED] statement that he met him working in the fields in that year are not credible. His statement that he regularly saw the applicant until 1996 also appears to contradict the applicant's testimony that he returned to Mexico in December 1987 and resided there until 2000. In addition, it is noted that [REDACTED] does not specifically state that he met the applicant in the United States or that he has worked with him in the United States over the years. Accordingly, [REDACTED] s letter is also severely lacking in probative value.
- A letter from [REDACTED] who states that he was an agriculture labor supervisor and licensed farm labor contractor in California from 1978 through 1986. He states that the applicant's father, [REDACTED], worked for his company as a summer seasonal employee from July 1981 until September 1985. He does not state that he has any direct, personal knowledge of where the applicant resided during this time period. Since the applicant did not indicate on his Form I-687 that he had ever resided in California, the information provided by [REDACTED] does not support the applicant's claim of continuous residence in the United States during the requisite time period.

Since all three affiants have provided information that is inconsistent with what the applicant indicated on his Form I-687, the evidence submitted on appeal is not credible or probative. 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).

As is stated above, 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). 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). However, this applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period, and has submitted only three affidavits from individuals who contradict the statements made by the applicant on his application.

The absence of sufficiently detailed, consistent 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 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-*, *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.