

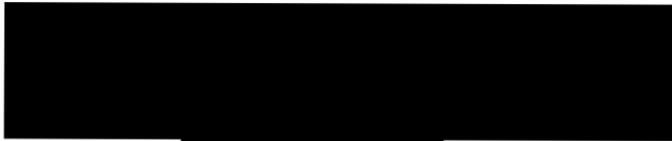
**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

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



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**



41

FILE: [REDACTED]  
MSC-06-048-12491

Office: NEWARK

Date: **JUL 25 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. 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.

*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, Newark. 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 November 17, 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. 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 submitted a Form I-694 Notice of Appeal of Decision Under Section 210 or 245A and a written statement. On appeal, the applicant stated that he arrived at the port of Long Beach, California as a crewman in a cargo ship in October 1981. The applicant states that he and a friend abandoned the ship and were forced to leave without their passports and seaman's books because they were in the possession of the ship's captain. The applicant claims that in 1987, he gave all of his "important documents" to a paralegal who offered to help him complete his application and never heard from the paralegal again. The applicant also states that he did not have a social security number until 1988 and therefore, was not able to open bank accounts, obtain credit cards, or obtain a driver's license. In addition, the applicant states that he was able to work in the United States, but he was paid in cash. 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)(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 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 resided in the United States for the requisite period.

The record shows that the applicant submitted a Form I-687 Application and Supplement to Citizenship and Immigration Services (CIS) on November 17, 2005. At part #30 of the Form I-687 application where applicants are asked to list all residences in the United States since first entry, the applicant listed his first address in the United States as [REDACTED] New Jersey, from October 1981 to August 1987. At part #33, he listed his first employment in the United States as a caregiver for [REDACTED] in Bergenfield, New Jersey, from November 1981 to April 1985. At part #32, the applicant listed two absences from the United States. The applicant states that he visited the Philippines from August 1987 to October 1987 and from July 1988 to October 1988.

The applicant has provided several notarized affidavits; a copy of the applicant's son's birth certificate; a copy of the applicant's employment authorization card issued on August 2, 2006; copies of the applicant's Borough of Bergenfield tax bills for 2005; a copy of the applicant's bank statement dated January 1, 2002; a copy of the applicant's January 2004 to December 2004 annual report of financial giving from the Bergen Christian Fellowship; a copy of the applicant's Social Security Administration statement dated August 18, 2005 indicating that the applicant paid social security taxes from 1988 to 2004; and copies of the applicant's Internal Revenue Service (IRS) Forms W-2 and 1040 for 1989, 1991, 1996, 1997, 2000, 2003, and 2004. The applicant's employment authorization card is evidence of the applicant's identity, but does 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 the requisite time period. The following evidence relates to the requisite period:

- A notarized form-letter "For Proof of Residency Affidavit" dated November 3, 2005 and a notarized affidavit dated January 7, 2007 from [REDACTED]. The declarant provides the same information in both affidavits. The declarant states that he lives in Teaneck, New Jersey and states that the applicant is his cousin and that the applicant stayed at his house. The declarant adds that the applicant lived at [REDACTED] New Jersey from October 1981 to August 1987. The record of proceeding contains evidence of the applicant's residence at the address stated above. Although the declarant states that the applicant lived with him from 1981 to 1987 and provides an address consistent with the Form I-687, the statement does not supply enough details to lend credibility to an at least 24-year relationship with the applicant. For instance, the declarant does not indicate under what circumstances the applicant came to live with him in 1981 or how he dates when the applicant began to live with the applicant. Given these deficiencies, this statement has minimal probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.
- A notarized form-letter "Affidavit of Witness" from [REDACTED] dated November 2, 2005. The declarant states that she lives in Bergenfield, New Jersey and has personal knowledge that the applicant has resided in the United States from December 1981 to the present. The declarant provides a list of addresses and dates for the applicant which is consistent with the applicant's Form I-687. The declarant also

states that the applicant is her husband's brother-in-law. The declarant states that the "longest period during the residence described in which she has not seen the applicant is one week." Although the declarant states that she has known the applicant since 1981 and provides some information consistent with the Form I-687, the statement does not supply enough details to lend credibility to an at least 24-year relationship with the applicant. For instance, the declarant does not indicate under what circumstances she met the applicant in 1981 or how she dates her initial acquaintance with the applicant. Given these deficiencies, this statement has minimal probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.

- A notarized form-letter affidavit "For Proof of Residency" from [REDACTED] dated November 2, 2005. The declarant states that she lives in New Milford, New Jersey and states that the applicant lived at [REDACTED] New Jersey from October 1987 to July 1988. The declarant states that the applicant is her brother-in-law and that the applicant "resided at [her] previous address." Although the declarant provides an address for the applicant that is consistent with the Form I-687, the declarant does not provide information about the applicant's first entry into the United States or confirm whether he resided in the United States during the entire relevant time period. Further, the declarant provides no details or information, generated by her claimed association with the applicant, that would corroborate the reliability of her assertions. Given these deficiencies, this statement has minimal probative value in supporting a claim that the applicant entered the United States in 1981 and resided in the United States for the entire requisite period.

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 October 1981. The applicant claims that he arrived at the port of Long Beach, California as a crewman in a cargo ship in October 1981. The applicant states that he and a friend abandoned the ship and were forced to leave without their passports and seaman's books because they were in the possession of the ship's captain. The applicant also states that he flew to New Jersey to be with his girlfriend, now his wife, and that he has lived in New Jersey since that time. The applicant also states that he traveled to the Philippines on August 11, 1987 after his mother died and returned to the United States "the same way that [he] first came to the United States. Although the applicant claims to have received a travel document from the Philippine consulate in New York, the applicant has not submitted any evidence of his entries into the United States or into the Philippines. The applicant claims to have lost his passport "sometime [in] September 1987" by giving it to a paralegal whom he hired to file his Form I-687 application and who subsequently disappeared after being paid. The applicant states that he has "exerted all efforts possible to locate this person but to no avail." 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. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden

of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). As noted above, to meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony. In this case, his assertions regarding his entry are not supported by any credible evidence in the record.

The director issued a notice of intent to deny (NOID) on November 9, 2006. The director denied the application for temporary residence on December 12, 2006. In denying the application, the director found that the applicant failed to establish that he entered the United States prior to January 1, 1982 and 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, the applicant restated that he arrived at the port of Long Beach, California as a crewman in a cargo ship in October 1981 and that he and a friend abandoned the ship leaving their passports and seaman's books because they were in the possession of the ship's captain. The applicant also provides an explanation regarding his dealings with a public notary and although the applicant states that he paid and gave his documents to the notary for filing, there is no remedy available for an applicant who assumes the risk of authorizing an unlicensed attorney or unaccredited representative to undertake representations on his behalf. *See* 8 C.F.R. § 292.1. The AAO only considers complaints based upon ineffective assistance against accredited representatives. *Cf. Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988)(requiring an appellant to meet certain criteria when filing an appeal based on ineffective assistance of counsel).

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 evidence 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