

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

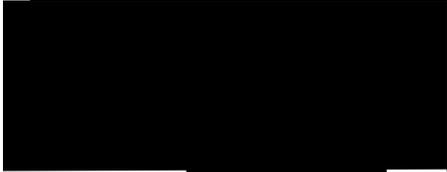
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

L1



FILE:



Office: NATIONAL BENEFITS CENTER

Date:

JUN 18 2008

MSC 06 097 10489

IN RE:

Applicant:



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.

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, and is now before the Administrative Appeals Office 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. Specifically, the director named the affiants whose attestations were submitted in support of the applicant's claim and noted that none claimed to have known the applicant prior to 1984. The director also cited an inconsistency between one affiant's statement and information provided by the applicant on his Form I-687. 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 asserts that the director's denial was erroneous and points out that all of the affidavits submitted in support of his claim were notarized. The applicant explains that due to the passage of time since the statutory period was in effect, he was unable to provide further documentation.

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 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 presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the alien 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, 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 evidence to demonstrate that he resided in the United States during the requisite time period. In the present matter, the applicant has not met this burden. The record shows that the applicant did not submit any supporting evidence at the time he filed the Form I-687. Therefore, the director issued a notice of intent to deny dated March 29, 2006, informing the applicant of this deficiency. In response, the applicant provided a number of contemporaneous documents, including his tax returns from 2002-2005, utility bills, bank statements, etc. While all items were addressed to the applicant at his address in the United States, the earliest of these documents was a rental receipt dated in the year 2000. Thus, these documents lack probative value, as they fail to establish that the applicant entered the United States prior to January 1, 1982 and continued to reside here throughout the entire statutory period.

The applicant also provided seven affidavits attesting to his work and residence in the United States during the statutory period. [REDACTED] and [REDACTED], whose affidavits were dated February 15, 2006, February 16, 2006, April 6, 2006, February 7, 2006, and February 6, 2006, respectively, all attested to the applicant's employment. Of those affiants, two, namely [REDACTED] and [REDACTED], claimed to have employed the applicant. [REDACTED] claimed that he employed the applicant starting "mid 1984" and continued to employ him for two years. [REDACTED] merely indicated that he employed the applicant in 1986 in Nutley, New Jersey, but provided no further information. Thus, neither of the affidavits meets the regulatory requirements for letters of employment as listed in C.F.R. § 245a.2(d)(3)(i). Specifically, neither affiant provided the applicant's address at the time of the alleged employment period, the applicant's dates of employment and duties with the employer, or indicated whether either of their statements was based on official company records, and if so, where those records are located. Additionally, the applicant indicated in No. 33 of his Form I-687 that he was

self employed for an undisclosed time period. This information is entirely inconsistent with the claims of either of the above affiants. 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). This inconsistency has neither been explained nor resolved. As such, both employment affidavits will be afforded only minimal weight as evidence of the applicant's residence in the United States during the statutory period.

With regard to the affidavits of [REDACTED] who claimed to have met the applicant in July 1984, Mr. [REDACTED] who claimed to have met the applicant in 1985, and [REDACTED], who claimed to have met the applicant on a job site in June 1985, no one provided any information beyond claiming that they met the applicant during their respective employment and stating that they became good friends with the applicant as a result of being coworkers. None of the individual identified specific events or discussed the circumstances of the applicant's residence in the United States during the relevant time period. Additionally, inconsistency regarding the applicant's employment is also present with regard to each of these affidavits, where the affiants contradict the notion that the applicant was self-employed during the statutory period. *Id.* As such, these affidavits will also be afforded only minimal evidentiary weight.

The two remaining affidavits, dated February 15, 2006 and March 2, 2006, respectively, were provided by [REDACTED] and [REDACTED], both of whom claimed to be friends with the applicant. [REDACTED] stated that he first met the applicant in March 1984 and claimed that he and the applicant used to "hang" together. [REDACTED] stated that he met the applicant in 1985 at a park while playing soccer. He claimed that he and the applicant played in soccer tournaments every Sunday and went out to eat. It is noted that both affidavits are extremely general in their contents, lacking sufficient information about specific events and/or circumstances pertaining to the applicant's residence in the United States during the relevant time period. Thus, due to their lack of probative value, these affidavits will only be afforded minimal evidentiary weight.

On July 17, 2006, the director issued a notice denying the application. The director noted that none of the documentation submitted by the applicant established his presence in the United States as of the commencement of the statutory period. The director also noted that the applicant's departure from the United States from July until December 1984 was inconsistent with the affidavits of [REDACTED] and [REDACTED] who claimed that the applicant commenced his employment for [REDACTED]'s construction business in mid 1984 and July 1984, respectively. The director questioned the possibility that the applicant would obtain a job with [REDACTED] and depart the United States within a short time period of having obtained that job.

On appeal, the applicant insists that the director's decision is incorrect and claims that notarized affidavits had been submitted establishing the identities of the respective affiants who attested to the applicant's presence in the United States during the statutory period. However, the applicant failed to address the fact that none of the documentation submitted established his presence in the United States prior to 1984. Thus even if the affidavits were not lacking in probative value as discussed above, they alone would be insufficient to meet the applicant's burden of proof.

In general, 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. As previously stated, 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). Given the inconsistencies discussed above as well as 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-*, 20 I&N Dec. 77. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

Additionally, an alien shall be regarded as having resided continuously in the United States if at the time of filing an application for temporary resident status, no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, through the date the application is filed, unless the alien can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the alien was maintaining residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.1(c).

While not specifically addressed in the director's decision, the applicant in the present matter has provided information that indicates a prolonged absence from the United States. Specifically, No. 32 of the Form I-687 shows that the applicant departed the United States in July 1984 and returned to the United States in December 1984, which is a prolonged absence lasting beyond the time period specified in 8 C.F.R. § 245a.1(c). The applicant indicated that the reason for his absence was to visit, which cannot be deemed an emergent reason. Therefore, even if the applicant were to have successfully established his entry into the United States since prior to January 1, 1982, his prolonged absence would have interrupted the continuous residence he may have accrued prior to that absence.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*; 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

Accordingly, the applicant is ineligible for temporary resident status on the basis of the additional ground discussed above.

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