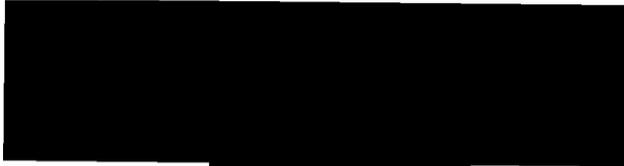




U.S. Citizenship
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FILE: 
MSC-05-194-11143

Office: LOS ANGELES

Date: JUN 19 2008

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: 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, 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. 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 asserts his claim of eligibility for temporary resident status and attempts to explain the contradictions found in the record.

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. See 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.* 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 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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his or her burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on April 12, 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 listed [REDACTED] Los Angeles, California, from June of 1980 to January of 1983; [REDACTED] Place, Los Angeles, California, from February of 1983 to November of 1983; and [REDACTED] Los Angeles, California, from December of 1983 to April of 2005. Similarly, at part #33, where the applicant was asked to indicate his employment history he showed his first employment in the United States to be for S&M Electronic Company LTD. as a cutter from June of 1980 to 1986; and self-employed in Pico Rivera, California from 1986 to June of 1995.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted the following attestations:

- A declaration from Monsignor [REDACTED] of the Church of the Resurrection dated March 21, 2005, in which he stated that the applicant has lived at [REDACTED] since 1980. The Monsignor also stated that the applicant is single, works in construction, and is well known at the parish. This statement is inconsistent with the applicant's statement on his Form I-687 application, at part #30 where he lists his address as [REDACTED] Los Angeles, California, from June of 1980 to January of 1983; and [REDACTED], Los Angeles, California, from February of 1983 to November of 1983. The declarant's statement is also inconsistent with the applicant's statement on his Form I-687 application, at part #31 where he was asked to list all affiliations or associations, clubs, organizations, churches, unions, or businesses, and the applicant did not list

any associations or affiliations. In addition, the declaration does not conform to regulatory standards for attestations by churches at 8 C.F.R. § 245a.2(d)(3)(v). Specifically, the declaration does not state the address where the applicant resided during the alleged membership period, nor does it establish the origin of the information being attested to. It is further noted that the declaration does not support the applicant's contention that he was present in the United States before January 1, 1982. Because this letter does not conform to regulatory standards, and because it conflicts with other evidence in the record and is lacking in detail and probative value, it can be accorded little weight in establishing that the applicant resided in the United States since before January 1, 1982.

- A declaration from [REDACTED] of Los Pinitos Nuevos Bakery in which he stated that he has known the applicant since 1980 when the applicant began buying bread from his bakery. Here, the declarant fails to indicate the frequency with which he saw and communicated with the applicant throughout the requisite period. The declarant has failed to provide any relevant and verifiable testimony, such as the applicant's places of residence in this country, to corroborate the applicant's claim of residence in the United States since prior to January 1, 1982. Because this declaration is significantly lacking in detail, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.
- A declaration from [REDACTED] dated March 9, 2005 in which he stated that he has known the applicant since May of 1980 when they were neighbors in the 3500 block of 7th Street, Los Angeles, California. He also stated that he has a working relationship with the applicant. Here, the statement is inconsistent with the applicant's statement on his Form I-687 application, at part #30 where he lists his address as [REDACTED] Los Angeles, California, from June of 1980 to January of 1983; [REDACTED] Los Angeles, California, from February of 1983 to November of 1983; and [REDACTED], Los Angeles, California, from December of 1983 to April 12, 2005. There is no evidence in the record to demonstrate that the applicant lived on 7th Street before 1983. This inconsistency calls into question the declarant's ability to confirm that the applicant resided in the United States during the requisite period. Because this declaration contains testimony that conflicts with what the applicant showed on his Form I-687 application, doubt is cast on assertions made in the attestation. Because this letter conflicts with other evidence in the record and is lacking in detail and probative value, it can be accorded only minimal weight in establishing that the applicant resided in the United States since prior to January 1, 1982.
- A declaration from [REDACTED] and [REDACTED] in which they stated that they have known the applicant since 1980 when he moved into their neighborhood and that they have since been friends. Here, the declarants fail to indicate what neighborhood they are speaking of. They fail to specify the length of time the applicant resided in this area. The declarants fail to indicate the frequency with which they saw and communicated with the applicant throughout the requisite period. This declaration is lacking in detail therefore, it can be afforded little weight in establishing that the applicant resided in the United States as he claimed.

- A declaration from [REDACTED] in which he stated that he has known the applicant since 1980 and that the applicant lived with him at [REDACTED] Los Angeles, California, when the applicant first arrived in the United States. He also stated that he and the applicant moved to [REDACTED] in Los Angeles, California in 1983, and that they have kept in touch with each other. He submitted a copy of his Social Security Statement with years of employment listed from 1979 to 2000. The declarant failed to state how, when and where he met the applicant. He provided scant details of their relationship. For these reasons, this declaration will be given little weight.
- A declaration from [REDACTED] dated March 23, 2005 in which she stated that the applicant was her parents' neighbor on 7th Street in Los Angeles, California, and that she has known him since February of 1988. Because this letter is lacking in details, it can be accorded little weight in establishing that the applicant resided in the United States during the requisite period.

The applicant also submitted the following evidence:

- Copies of handwritten pay statements made out to [REDACTED] from S&M Electronic Die Company, LTD. dated from 1981 to 1986; and,
- Copies of the first page of the Internal Revenue Service Form 1040, U.S. Individual Income Tax Return bearing the name [REDACTED] as tax payer for the 1984 and 1985 tax years.

There has been no evidence presented in the record sufficient to establish that the applicant was also known by the names [REDACTED] and [REDACTED]. It is also noted that the applicant submitted a photocopy of a California Identification Card whose authenticity is questionable. The photocopied identification card appears to have been altered as the original name seems to have been covered-over and the applicant's name has been inserted in its place. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. The applicant has failed to submit any objective evidence to explain or justify the apparent alteration of the document.

In denying the application the director noted that neither the attestations nor the employment documents submitted by the applicant were credible. The director also noted that the applicant was unable to provide telephone numbers and addresses for the declarants during his interview with immigration officials, and that he had failed to submit independent documentation to support his claim that he worked under an assumed name.

On appeal, the applicant reasserts his claim of eligibility for temporary resident status and he attempted to explain the numerous inconsistencies found in the record. The applicant asserts that the dependents found on the tax forms were persons he considered to be his mother and brother; that he lived on Florence Street but spent a lot of time on 7th Street in Los Angeles, California; and that he made up a name and social security number in order to obtain employment. He concludes by asserting that he was nervous during his interview with immigration officials and that this resulted in a misunderstanding of what was required of him.

The applicant submitted the following attestation on appeal:

- A declaration dated February 27, 2006, from [REDACTED] in which he states that he has known the applicant to be present in the United States since 1980 when he came to work for S&M Elec. Die Company. He also states that he referred the applicant for the job and that the applicant used an assumed name in order to gain employment. The declarant fails to indicate the frequency with which he saw the applicant throughout the requisite period. Because this letter is specifically lacking in detail and probative value, it can be accorded only minimal weight in establishing that the applicant resided in the United States throughout the requisite period.

In the instant case, the applicant has failed to submit evidence that is credible, relevant, or probative sufficient to overcome the director's decision with respect to his continuous unlawful residence in the United States since prior to January 1, 1982, and throughout the requisite period. Although the applicant claims to have been nervous during his interview with immigration officials, he has failed to substantiate such claim. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). The applicant has failed to submit any objective evidence to explain or justify the inconsistencies contained in the record. The attestations submitted by the applicant are not credible, conflict with other evidence in the record, are lacking in detail, and have minimal probative value. The attestation submitted by the applicant on appeal is specifically lacking in detail.

The absence of sufficiently detailed 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 that are inconsistent with statements he made on his application and are lacking in detail and probative value, it is concluded that he has failed to establish continuous 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.