

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

**L 1**

FILE:



Office: LOS ANGELES

Date: **NOV 12 2008**

MSC 05 251 16785

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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter 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, or *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, Los Angeles. That 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 to U.S. Citizenship and Immigration Services (CIS). 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, counsel asserts that the applicant has provided sufficient evidence to establish continuous, unlawful residence in the United States for 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).

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. 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). To meet his or her burden

of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 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.

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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his burden of establishing that he maintained 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 a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to Citizenship and Immigration Services (CIS) on June 8, 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 he began to reside in Los Angeles, California in December 1981. At part #33, where the applicant was asked to list all of his employment in the United States since he first entered, he stated that he was employed as a distributor for ██████████ in Los Angeles beginning in December 1981 and that he continued to work for that employer.

Also in the record are the notes from the CIS officer who interviewed the applicant. Here, the officer's notes indicate that the applicant stated that he first entered the United States in December 1981 and that he remembers his date of entry well. He stated that he first resided with family member ██████████ for 10-12 years. He further stated that he met ██████████ in 1981 and that he had been working for ██████████ for approximately ten years at the time of his July 2006 interview.

It is noted that the applicant stated on his Form I-687 that he began working for ██████████ in December 1981 and continued to work for them when he submitted his form. However, his interview testimony indicates that the applicant began working for this company much more recently than December 1981, casting doubt on whether the applicant has accurately stated his employment history during the requisite period to CIS.

Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. 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).

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 applicant initially submitted the following documents that are relevant to the applicant's claim of continuous residence in the United States during the requisite period:

- Three affidavits that indicate they were signed in April 1988:
  - An affidavit from [REDACTED], who attests that the applicant resided with him from January 1981 to April 1988. It is noted that the applicant has consistently stated that he did not enter the United States until December 1981. This casts doubt on claims made by this affiant regarding the date that the applicant began to reside in the United States and on claims regarding the applicant's residence in general.
  - An affidavit from [REDACTED], who states that he and the applicant met while working and that they have known each other from May 1981 until the date he signed the affidavit; It is noted that the applicant has consistently stated that he did not enter the United States until December 1981. This casts doubt on claims made by this affiant regarding the date that the applicant began to reside in the United States and on claims regarding the applicant's residence in general.
  - An affidavit from [REDACTED] who states that the applicant has resided in his home in Los Angeles from September 1981 until April 1988. It is noted that the applicant has consistently stated that he did not enter the United States until December 1981. This casts doubt on claims made by this affiant regarding the date that the applicant began to reside in the United States and on claims regarding the applicant's residence in general.

- A declaration from [REDACTED], who states that the applicant resided in Los Angeles from 1981 and through the requisite period. He states that he met the applicant while they were both working at [REDACTED]. He states that they are both still working for this company and see each other daily. It is noted that this declaration is not dated.
- An affidavit from [REDACTED], who states that he has known the applicant since he entered the United States in 1981. He goes on to say that he employed the applicant as a vendor and as a door to door salesman beginning in 1991. The affiant also states that though he met the applicant in 1981, the applicant, "started helping me up to 1990."
- A declaration from [REDACTED], who states that she has known the applicant since 1987. She states that the applicant worked with her family selling produce and that she personally knows that the applicant has resided in the United States since 1987.

The applicant submitted several other documents which make reference to him residing in California after the requisite period. These documents are not relevant to the applicant's claim.

On July 14, 2006, the director issued a Form I-72 request for additional evidence, which instructed the applicant to provide the following within 72 days:

- Evidence that he would not become a public charge;
- Evidence that the affiants from whom he submitted affidavits resided in the United States from before 1982 until 1986 and phone numbers for each affiant; and
- Proof of each affiant's identity in the form of a government issued identification document.

In response to this Form I-72, the applicant submitted the following additional evidence:

- A photocopy of [REDACTED]' California Driver License and a photocopy of his Permanent Resident Card.
- Photocopies of W-2 Forms issued to [REDACTED] for the years 1981 through 1984 and tax forms completed by him for the years 1981 through 1986. The W-2 Forms submitted indicated that [REDACTED] worked for the following companies during the requisite period: in 1981 and 1982 he worked for [REDACTED]. And [REDACTED]; in 1983 and 1984 he worked for La Tapatia Tortilleria. It is noted that [REDACTED] stated in his declaration that he was working for [REDACTED] in 1981 when he met the applicant and that he continued to work for [REDACTED] when he submitted that declaration.
- A declaration, from [REDACTED], who submits a photocopy of his permanent resident card and attests to the applicant's continuous residence with his family in Los Angeles from 1981 to 1993. He states that the applicant worked with his brothers [REDACTED] and [REDACTED] in their business.

On February 23, 2007, the director issued a denial notice. In the denial, the director concluded that the applicant had failed to submit sufficient evidence to establish his continuous, unlawful residence in the United States during the requisite period. She stated that though the applicant submitted affidavits from affiants [REDACTED] and [REDACTED] who stated that they were his cousins and that he resided with them and other affidavits attesting to his continuous residence in the United States during the requisite period, the affiants failed to provide proof that they were present in the United States during the requisite period or that they were in contact with the applicant during that time. The director further stated that though many of the affiants and declarants state that the applicant worked for [REDACTED] beginning in 1981, affiant [REDACTED] indicates that the applicant did not begin working for that company until after the requisite period ended. The director further noted that though [REDACTED] stated that he met the applicant while they were working at [REDACTED] in 1981, his W-2 Forms submitted as proof of his residence indicate that he was working elsewhere during the requisite period. Because of these discrepancies, the director found the applicant failed to satisfy his burden of proof.

On appeal, the applicant submits a brief through counsel. Counsel asserts that the applicant has consistently stated that he first entered the United States in December 1981 and that he has also submitted evidence from individuals who state that they met him in 1981 and that know he resided in the United States during the requisite period. Counsel also reiterates that the applicant submitted proof that affiant [REDACTED] resided in the United States during the requisite period. Counsel concludes by stating that the applicant has satisfied his burden of proof.

Counsel's argument is not persuasive. Though the applicant has consistently stated that he entered the United States in December 1981, he submitted affidavits from three individuals who state that he began to reside in the United States before that date. Affiant [REDACTED] stated that he personally knows that the applicant resided in the United States since January 1981; affiant [REDACTED], stated that he knows the applicant began to reside in the United States in May 1981; and affiant [REDACTED], asserted that the applicant began to reside with him in September 1981. Further, though the applicant has submitted evidence that [REDACTED] from whom he submitted a declaration, resided in the United States from 1981 to 1986, some of the evidence submitted to establish that residence, Forms W-2, cast doubt on testimony provided by [REDACTED] in his declaration. Specifically, [REDACTED]'s Forms W-2 do not indicate that he was employed by [REDACTED], though he states that he worked for [REDACTED] from 1981 until he submitted his declaration. Though the director referred to this discrepancy in her decision, counsel did not address this issue on appeal.

Further, the record is not consistent regarding when the applicant began to work for [REDACTED]. Though his Forms I-687 state that he began working there in December 1981, his interview testimony indicates that he had worked for [REDACTED] for the past ten years. As the interview took place in July of 2006, this indicates that the applicant did not work for this company during the requisite period. The affidavit from [REDACTED] also indicates that the applicant's employment for [REDACTED] did not begin until after the requisite period ended. Though the applicant was informed of these apparent discrepancies by the director in her denial, counsel failed to account for it on appeal.

In summary, the applicant has provided evidence of his residence and employment in the United States relating to the period from before January 1, 1982 until the end of the requisite period. However, this evidence is not consistent, nor are his own assertions regarding his employment during the requisite period. This casts doubt on the applicant's claim that he was employed in the United States during that time. Further, as previously noted, the applicant has also submitted affidavits from three individuals who claim that the applicant resided with them on dates that are prior to the date the applicant states he entered the United States. This casts doubt on whether the applicant has accurately represented the date he first entered the United States to CIS.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, as well as the inconsistencies and contradictions noted in the record, seriously detract 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 inconsistencies in the record and the lack of credible supporting documentation, it is concluded that he 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.