

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY



U.S. Citizenship
and Immigration
Services

L1

FILE:

MSC-05-327-11729

Office: CHICAGO

Date: NOV 13 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:

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.

A handwritten signature in black ink, appearing to read "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 Director, Chicago. 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 first denied the application because the applicant failed to continuously reside in the United States in an unlawful status from 1988 until January 22, 1998. The applicant, through counsel, appealed the denial to the AAO, indicating that the director failed to correctly assess the requisite period at issue in the proceeding. The AAO withdrew the director's decision, finding that the applicant's absence from November 1988 until January 22, 1998 had no relevance because the absence did not occur during the requisite period. The AAO remanded to the matter to the district office with instructions to assess whether the applicant's evidence demonstrates his continuous unlawful residence in the United States during the requisite period. The director has now rendered a new decision, with a determination that the applicant has 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 four of the affidavits the applicant furnished were signed before a Notary Public. Counsel states that two of these affidavits had the affiants' addresses and phone numbers. Counsel states that the director did not dispute the credibility, relevance and probative value of the applicant's four affidavits. Counsel states that the director did not make an attempt to verify these affidavits. Counsel states that the director should have stated the reason the affidavits are insufficient. Counsel states that the director did not raise any doubt as to the truthfulness of the affidavits. Counsel states that the director failed to dispute the facts of the affidavits and evaluate and contradict the affidavits. Counsel asserts that the applicant has satisfied his burden of proof with sufficient probative, relevant and credible evidence.

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).

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 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 August 23, 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 showed his first address in the United States to be in Gonzalez, California from June 1981 until November 1988. At part #33, he showed his first employment in the United States to be as a self-employed lawn mower and snow mover in Benton Harbor, Michigan from March 1998 until June 2005. Notably, the applicant did not list any employment in the United States during the requisite period.

On November 17, 2005, the director, National Benefits Center, issued a Notice of Intent to Deny (NOID) to the applicant. The director determined that the applicant failed to provide documentation to establish his eligibility for temporary resident status. The director afforded the applicant a period of 30 days to furnish additional evidence in response to the NOID.

In rebuttal to the NOID, the applicant asserted that he entered the United States at San Ysidro, California with his family without inspection in June 1981. The applicant indicated that he lived in the United States illegally until November 1988. The applicant stated that his family filed a Form I-687 during the original legalization application period of May 1987 until May 1988. The applicant stated that this application was rejected because his family traveled to India in March 1987 and reentered the United States without inspection.

The applicant furnished the following fill-in-the-blank form affidavits:

- An affidavit from [REDACTED], dated December 17, 2005, which states that the affiant has knowledge of the applicant's residence at [REDACTED] Gonzalez, California from June 1981 until November 1988. It states that the affiant has known the applicant since 1982 and they have met many times at the temple and "in the marriage party." This affidavit fails to convey how the affiant first became acquainted with the applicant. It is unclear whether they first met in the United States or abroad. It also does not convey how the affiant dated their initial acquaintance. Furthermore, the affidavit fails to indicate the locations and dates of the events they purportedly attended together. Given these deficiencies, this affidavit is without any probative value as evidence of the applicant's residence in the United States during the requisite period.
- An affidavit from [REDACTED], dated December 17, 2005, which states that the affiant has knowledge of the applicant's residence at [REDACTED], Gonzalez, California from June 1981 until November 1988. It states that the affiant is the applicant's relative and they get together for family parties and field trips with their families. It also states that the applicant has been living in the United States since June 1981. This affidavit does not convey how the affiant first dated his first meeting with the applicant in the United States. It is unclear whether he has direct personal knowledge of the applicant's residence in the United States during the requisite period. Furthermore, the affidavit fails to indicate the locations and dates of the activities they purportedly engaged in together. Given these deficiencies, this affidavit is without any probative value as evidence of the applicant's residence in the United States during the requisite period.

On June 8, 2006, the Director, Chicago Field Office, issued a Notice of Decision to deny the application. In denying the application, the director noted that the applicant testified he was absent from the United States from 1988 until January 22, 1998. The director noted that the applicant's record contains a Form I-94, which shows that he was lawfully admitted into the United States on January 22, 1998 with a P3 visa. The director determined that based on this lawful admission, the applicant failed to continuously reside in an unlawful status until the date he filed his application for temporary resident status. The director further determined that since the applicant's absence from 1988 until January 22, 1998 is in excess of 180 days, he is ineligible for temporary resident status. The director concluded that the applicant is ineligible for temporary resident status under the CSS/Newman Settlement Agreements.

On appeal, counsel asserted that the director erred in denying the application based on the applicant's absence outside the United States during the period from 1988 until January 1998. Counsel stated that the applicant is only required to establish continuous residence in the United States in an unlawful status from prior to January 1, 1982, through the date he was discouraged from filing a Form I-687 during the original legalization application period ending on May 4, 1988.

On December 17, 2007, the AAO withdrew the director's decision, finding that the applicant's absence from November 1988 until January 22, 1998 had no relevance because the absence did not occur during the requisite period of January 1, 1982 though the date that he attempted to file a Form I-687 with the Immigration and Naturalization Service during the original legalization application period of May 5, 1987 to May 4, 1988. The AAO remanded the matter to the district office with instructions to assess whether the applicant's evidence demonstrates his continuous unlawful residence in the United States during the requisite period.

On May 29, 2008, the director issued a Notice of Intent to Deny (NOID) to the applicant. The director determined that the applicant furnished unverifiable affidavits from [REDACTED] and [REDACTED]. The director determined that the applicant failed to establish the credibility of his application and his evidence does not prove that he was continuously in the United States during the requisite period. The director afforded the applicant a period of 30 days to overcome the basis for the NOID.

In rebuttal to the NOID, counsel asserted that since the applicant was illegally residing in the United States and did not have a Social Security Number, he cannot produce a lease, bank statement, credit card statement or other documentary proof. Counsel stated that the applicant can only provide affidavits from people who knew him. Counsel stated that the affidavits from [REDACTED] and [REDACTED] were signed before a Notary Public; therefore they are verifiable. Counsel furnished the following additional affidavits:

- An affidavit from [REDACTED], dated June 13, 2008, which states that he met the applicant in Yuba City at the Yuba City Sikh temple in Yuba City, California in 1981. The

affidavit provides that the applicant resided in the United States at [REDACTED] Gonzalez, California from 1981 to 1988. It states that the affiant has met the applicant throughout the year at Sikh festivals. This affidavit fails to indicate how the affiant dated his initial acquaintance with the applicant. It fails to illustrate the frequency of the affiant's contact with the applicant during the requisite period. Given these deficiencies, this affidavit is of little probative value as evidence of the applicant's residence in the United States during the requisite period.

- An affidavit from [REDACTED], dated June 17, 2008. The affidavit states that the affiant met the applicant at the Yuba City Sikh Temple during the Baisakhi festival in April 1986. It states that the affiant has met the applicant on numerous occasions from 1986 until present time. This affidavit fails to illustrate the frequency of the affiant's contact with the applicant from 1986 until the end of the requisite period. Given this deficiency, this affidavit is of little probative value as evidence of the applicant's residence in the United States from 1986 until the end of the requisite period.

On July 11, 2008, the director issued a Notice of Decision to deny the application. In denying the application, the director found that the applicant submitted insufficient documentation to overcome the grounds for denial. The director determined that the affidavits from [REDACTED] and [REDACTED] do not establish by a preponderance of the evidence that is eligible for temporary resident status. The director concluded that the applicant failed to meet his burden of proof in the proceeding.

On appeal, counsel asserts that the four of the affidavits the applicant furnished were signed before a Notary Public. Counsel states that two of these affidavits had the affiants' addresses and phone numbers. Counsel states that the director did not dispute the credibility, relevance and probative value of the applicant's four affidavits. Counsel states that the director did not make an attempt to verify these affidavits. Counsel states that the director should have stated the reason the affidavits are insufficient. Counsel states that the director did not raise any doubt as to the truthfulness of the affidavits. Counsel states that the director failed to dispute the facts of the affidavits and evaluate and contradict the affidavits. Counsel asserts that the applicant has satisfied his burden of proof with sufficient probative, relevant and credible evidence.

Counsel's assertions on appeal do not overcome the basis for the director's denial. The applicant has failed to provide credible, reliable and probative evidence of his continuous residence in the United States during the requisite period. The applicant has not provided sufficient evidence to establish that he entered the United States prior to January 1, 1982. Nor has he provided sufficient evidence to establish that he has resided in the United States during the requisite period. The applicant has been given the opportunity to satisfy his burden of proof with a broad range of evidence. *See* 8 C.F.R. § 245a.2(d)(3). The applicant submitted as evidence of his continuous residence in the United States during the requisite period, four affidavits. As stated, these affidavits lack significant detail on the affiants' relationship with the applicant. Consequently, they are either without any probative value or of little probative value. Pursuant

to 8 C.F.R. § 245a.2(d)(6), the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. Since the applicant's documentation is, at best, of minimal probative value, he has not furnished sufficient evidence to meet his burden of proof in this proceeding.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire 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 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.