

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:

MSC-05-127-11538

Office: LOS ANGELES

Date:

OCT 14 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 of the Los Angeles office. 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 found the applicant inadmissible under Section 212(a)(9)(A) of the Act because he was expeditiously removed from the United States and sought admission within five years of removal without first obtaining consent to reapply for admission. The director also 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 for the applicant states that the applicant was not required to file a Form I-212 because Form I-690 can waive inadmissibility under Section 212(a)(9)(A) of the Act, as is stated specifically on Form I-690. Counsel also states that the director's decision failed to include analysis or discussion of the evidence provided by the applicant to establish his residence in the United States.

The first issue for determination 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. 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.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on February 4, 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 the following addresses during the requisite period: [REDACTED] Long Beach, California from 1980 to 1986; and [REDACTED] Compton, California from 1986 to 1990. At part # 32 where applicants were asked to list all absences from the United States since entry, the applicant listed the following trips to Mexico: A trip to get married, from April 1986 to May 1986; and a trip to visit family from November 1987 to December 1987. At part #33 where applicants were asked to list all employment in the United States since entry, the applicant listed the following positions: Miscellaneous jobs from April 1980 to December 1980; maintenance for the Executive Mop Agency from January 1981 to February 1986; and carpet installation for Virginia Discount Carpets from February 1986 to November 1989.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided voluminous documentation. Documents relating to the requisite period include multiple attestations.

The applicant provided a notarized declaration from [REDACTED] dated November 15, 1993, which states that the declarant knows from personal knowledge that the applicant has been physically present in the United States at [REDACTED] in Compton, California from April 1980 to present. This is inconsistent with the applicant's Form I-687, where he indicated that he lived at [REDACTED], rather than at [REDACTED], and he lived there only from 1986 through the end of the requisite period, rather than beginning in 1980. This inconsistency casts doubt on the declarant's ability to confirm the applicant's residence in the United States during the requisite period. The declarant also stated that he is married to the applicant's sister-in-law. This declaration fails to include details regarding the nature and frequency of the declarant's contact with the applicant, and how the declarant dates the beginning of the applicant's residence in the United States. As a result of these deficiencies, this declaration will be given only nominal weight in establishing that the applicant resided in the United States throughout the requisite period.

The form affidavit from [REDACTED] dated July 29, 1993, states that, to the affiant's personal knowledge, the applicant has resided in Compton, California from October 1986 to present. The affiant stated that he dates the beginning of his acquaintance with the applicant because he has known the applicant since he married the affiant's sister-in-law. He also stated that he sees the applicant on a regular basis because they both work at the same place. This affidavit lacks detail regarding the dates and location of the affiant's employment with the applicant. Despite these deficiencies, this affidavit carries some weight as evidence of the applicant's residence in the United States from October 1986 to the end of the requisite period.

The applicant provided another form affidavit from [REDACTED] dated November 5, 1993. The affidavit states that, to the best of the affiant's knowledge, the applicant has been living in the United States since 1980. This affidavit seems to indicate that the affiant had met the applicant by 1980. The prior affidavit from [REDACTED] states that he met the applicant after the applicant's marriage. The record contains an affidavit from the applicant that indicates he was married on April 19, 1986. This information, together with the information in [REDACTED] prior affidavit, casts doubt on the affiant's ability to confirm the applicant's residence in the United States prior to 1986. This affidavit lacks detail regarding the nature and frequency of the affiant's contact with the applicant, the date and circumstances of their first meeting, and the region where the applicant resided in the United States. Due to these deficiencies, this affidavit will be given only nominal weight.

The applicant provided a third attestation from [REDACTED] in Spanish with certified English translation, dated November 29, 2004. This sworn declaration states that the declarant met the applicant in 1986 at the declarant's home, although the applicant had already been living in the United States for many years before. The declarant stated that the applicant is married to the declarant's wife's sister, whom he married in 1986 in Mexico. The declarant stated that he was living at [REDACTED] when he met the applicant. He stated that he has been in contact

with the applicant since they first met in 1986 at family reunions, birthdays and holidays. This declaration fails to specifically state that the applicant resided in the United States from 1986 until the end of the requisite period, and it indicates that the declarant lacks first-hand knowledge of the applicant's residence prior to 1986. The declaration also lacks detail regarding the declarant's frequency of contact with the applicant from 1986 to the end of the requisite period. As a result, the declaration will be given only minimal weight in establishing that the applicant resided in the United States from 1986 to the end of the requisite period.

The applicant provided a declaration from [REDACTED] of Virginia Discount Carpets, which states that the applicant worked for the declarant from February 1986 to November 1989. This declaration does not conform to regulatory standards for letters from employers as stated in 8 C.F.R. § 245a.2(d)(3)(i). Specifically, the declaration does not include the applicant's address at the time of employment, duties with the company, whether or not the information was taken from official company records, where the records are located, and whether CIS may have access to the records. Therefore, this declaration will be given only nominal weight in establishing the applicant's residence in the United States during the requisite period.

The applicant provided a declaration from [REDACTED] of The Executive Mop. The declaration states that the applicant was employed by The Executive Mop from January 1981 until February 1986 as a janitor. This declaration does not conform to regulatory standards for letters from employers as stated in 8 C.F.R. § 245a.2(d)(3)(i). Specifically, the declaration does not include the applicant's address at the time of employment, whether or not the information was taken from official company records, where the records are located, and whether CIS may have access to the records. Therefore, this declaration will be given only nominal weight in establishing the applicant's residence in the United States during the requisite period.

The applicant provided a form affidavit from [REDACTED] dated July 29, 1993. The affidavit states that, to the affiant's personal knowledge, the applicant has resided in Compton, California from February 1981 to present. This is somewhat inconsistent with the applicant's Form I-687, where he indicated that he lived in Long Beach, rather than Compton, from 1980 to 1986. The affiant also stated that he is able to date the beginning of his acquaintance with the applicant in the United States because he and the applicant were neighbors in Mexico, and when the applicant arrived in the United States he came to visit the affiant. This statement also seems to be inconsistent with the applicant's Form I-687 where he indicated he resided in the United States starting in 1980, rather than in February 1981. These inconsistencies cast doubt on the affiant's ability to confirm that the applicant resided in the United States during the requisite period. The affiant also stated that he sees the applicant regularly because they work for the same company, but he failed to provide the name of the company. Due to these deficiencies, this affidavit will be given only nominal weight.

The applicant provided an additional affidavit from [REDACTED] dated December 15, 2004. The affiant stated that he knows the applicant resided in the United States from 1981 through 1988 because he would see the applicant often. He stated that they would play soccer at the park and talk, visit each other at their homes, and see each other at parties. He stated that the applicant later

worked with the affiant at Western Waste Management. This affidavit fails to provide any explanation for [REDACTED]'s prior affidavit, which indicates that the applicant visited the affiant when he arrived in the United States yet only confirms the applicant's residence in the United States since February 1981, although on his Form I-687 the applicant indicated he arrived in 1980. This affidavit also fails to provide detail regarding the location where the applicant resided and their frequency of contact during the requisite period. Despite these deficiencies, this affidavit carries some weight in establishing that the applicant resided in the United States from 1981 through 1988.

The notarized declaration from [REDACTED] dated November 22, 1993 states that the applicant resided at the [REDACTED] address from December 1986 to January 1990. The declaration states that, at that time, the declarant was the landlord at that address and collected monthly rent from the applicant. This declaration lacks detail regarding the nature and frequency of the declarant's contact with the applicant, whether there are any records of rent or bills paid by the applicant and whether CIS may have access to the records, and how the declarant dates the applicant's period of tenancy with him. As a result of these deficiencies, this declaration will be given only minimal weight in establishing the applicant's residence in the United States from December 1986 to the end of the requisite period.

The applicant also provided an affidavit from [REDACTED] dated November 29, 2004. The affidavit states that the affiant resided both at [REDACTED] and [REDACTED] from 1982 to May 1988, but fails to explain why he maintained two residences during this time. The affiant stated that he met the applicant in December 1986 when the applicant came to the affiant's apartment to ask if he had a room to rent. The affiant stated that the applicant resided with him from December 1986 to January 1990 at the [REDACTED] address. The affiant stated that the applicant explained how he went through the mountains when he entered the United States in 1981 and started residing in the United States. This is somewhat inconsistent with the applicant's Form I-687, where he indicated that he first began residing in the United States in 1980 rather than in 1981. In addition, this affidavit lacks detail regarding the nature and frequency of the affiant's contact with the applicant, considering that the affiant indicated that he maintained two addresses during the time he resided with the applicant; whether there are any records of rent or bills paid by the applicant and whether CIS may have access to the records; and how the affiant dates the applicant's period of tenancy with him. As a result of these deficiencies, this affidavit will be given only minimal weight in establishing the applicant's residence in the United States from December 1986 to the end of the requisite period.

The notarized declaration from [REDACTED] states that the applicant lived with him at the [REDACTED] address from February 1981 to November 1986. The declarant stated that the applicant helped pay the utilities and rent, and this is why the applicant does not have bills in his name. This declaration lacks detail regarding how and when the declarant met the applicant, and how they came to be living together. It also fails to indicate whether copies of bills paid by the declarant could be made available to CIS. As a result of these deficiencies, this declaration will be given only minimal weight in establishing that the applicant resided in the United States from February 1981 to November 1986.

The applicant provided a declaration from his brother, [REDACTED], in Spanish with a certified English translation. The declaration states that the applicant left Mexico in 1980. This declaration does not indicate that the declarant has direct, first-hand knowledge of the applicant's residence in the United States during the requisite period. The declaration also lacks detail regarding the region where the applicant resided in the United States and the nature and frequency of the declarant's contact with the applicant during the requisite period. Therefore, it will be given only nominal weight.

Similarly, the applicant provided a declaration from his brother, [REDACTED], in Spanish with a certified English translation. The declaration states that the applicant left Mexico in 1980. This declaration also does not indicate that the declarant has direct, first-hand knowledge of the applicant's residence in the United States during the requisite period. The declaration also lacks detail regarding the region where the applicant resided in the United States and the nature and frequency of the declarant's contact with the applicant during the requisite period. Therefore, it will be given only nominal weight.

The applicant also provided a declaration dated January 6, 2004 from his parents, [REDACTED] and [REDACTED], in Spanish with a certified English translation. The declaration states that the applicant has resided permanently in Los Angeles from 1980 to the present. This declaration also does not indicate that the declarants have direct, first-hand knowledge of the applicant's residence in the United States during the requisite period. The declaration also lacks detail regarding the nature and frequency of the declarants' contact with the applicant during the requisite period. Therefore, it will be given only minimal weight.

The applicant provided a sworn declaration from [REDACTED], which states that the declarant met the applicant in 1986 at a soccer game in the United States, at the park. The declarant stated that the applicant explained to her that he came to the United States in 1981. This declaration fails to state that the applicant resided in the United States during the requisite period. In addition, the declaration fails to indicate that the declarant has direct, first-hand knowledge of the applicant's entry into the United States and residence during the requisite period. Therefore, this declaration will be given only nominal weight in establishing that the applicant resided in the United States during the requisite period.

The applicant provided a certified translation of a sworn declaration from [REDACTED]. The declaration states that the declarant met the applicant in 1985 at the declarant's store in Compton, California. The applicant was a client who bought things from the declarant's store "since a long time." The declarant stated that he saw the applicant in the United States from 1985 through 1988 because the applicant would often buy things from the declarant's store. This declaration lacks detail regarding the declarant's frequency of contact with the applicant and how he dates his acquaintance with the applicant. Therefore, it will be given only minimal weight in establishing that the applicant resided in the United States from 1985 through 1988.

The applicant provided a certified translation of a sworn declaration from [REDACTED]. The declaration states that the declarant met the applicant in 1982 in the United States. They were on the street looking for work together, and the declarant was living in Santa Ana, California at the time. The declarant stated that he knows the applicant resided in the United States from 1982 through 1988 because they would get together every two or three weeks to talk or go eat. The declarant stated that the applicant resided in Long Beach and Compton, California during that time. This declaration constitutes some evidence of the applicant's residence in the United States from 1982 through 1988.

The applicant provided a certified translation of a sworn declaration from [REDACTED]. The declarant stated that he met the applicant in 1981 in the United States through some friends at a park playing soccer. The declarant stated that he knows the applicant resided in the United States from 1981 through 1988 because he would see the applicant often. This declaration lacks detail regarding the nature and frequency of the declarant's contact with the applicant, the region where the applicant resided and how he dates his acquaintance with the applicant. Therefore, it will be given only minimal weight in establishing that the applicant resided in the United States from 1981 through 1988.

The record also includes a Form I-687 signed by the applicant under penalty of perjury on November 5, 1993 and submitted to establish his class membership pursuant to the CSS/Newman Settlement Agreements. At part #33 where applicants were asked to list all residences in the United States since first entry, the applicant listed only the following address during the requisite period: [REDACTED], Compton, California from April 5, 1980 to April 4, 1992. This is inconsistent with the current Form I-687 application, where the applicant listed entirely different addresses during the requisite period. At part #35 where applicants were asked to list absences from the United States since entry, the applicant listed only a trip to Mexico from November 25, 1987 to December 25, 1987 to visit his parents and his brothers. This is also inconsistent with the current Form I-687 application, where the applicant listed an additional trip during 1986. At part #36 where applicants were asked to list employment in the United States since first entry, the applicant listed only a position as operator for Wester West Industries from May 1989 to present, and failed to list any of the positions he later listed on the current Form I-687 application during the requisite period. These inconsistencies cast serious doubt on the applicant's claim to have resided in the United States throughout the requisite period.

In denying the 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.

On appeal, counsel for the applicant stated that the director's decision failed to include analysis or discussion of the evidence provided by the applicant to establish his residence in the United States.

In summary, the applicant has provided numerous attestations that relate to the requisite period. The great majority of these attestations are inconsistent with each other or the current Form I-687 application, lack sufficient detail, indicate that the declarant lacks personal knowledge of the applicant's residence during the requisite period, or fail to conform to regulatory standards. 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. 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 contradictions between the applicant's two Form I-687 applications, and between the current Form I-687 and the other documents he submitted, and given his 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 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.

The second issue for determination is whether the applicant is inadmissible to the United States based on his failure to file a Form I-212 waiver application. The director found the applicant inadmissible under section 212(a)(9)(A) of the Act because he was expeditiously removed from the United States and sought admission within five years of removal without first obtaining consent to reapply for admission.

In her decision, the director stated that the applicant was expeditiously removed from the United States in 2001. She noted that the applicant filed an I-690 Application for Waiver of Grounds of Excludability. She referred to 8 C.F.R. § 245a.2(k)(3) and stated that provisions of section 212(a)(9)(A) cannot be waived.¹

The applicant indicated on his Form I-690 Application for Waiver of Grounds of Excludability that he was expeditiously removed from the United States in 2001. He sought admission within five years of that date by filing his Form I-687 on February 4, 2005. Therefore, he is inadmissible to the United States under section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i), which relates to applicants who were ordered removed on arrival to the United States and sought admission within five years of their removal. Pursuant to section 245A(a)(4)(A) of the Act, 8 U.S.C. § 1255a(a)(4)(A) and section 245A(d)(2)(B)(i) of the Act, 8 U.S.C. § 1255a(d)(2)(B)(i), such inadmissibility may be waived in the case of individual applicants for humanitarian purposes, to assure family unity, or when it is otherwise in the public

¹ The director noted that 8 C.F.R. § 245a.2(k)(3)(i) indicates that "paragraphs (9) and (10) (criminals)" of Section 212(a) of the Act may not be waived. It is noted that 8 C.F.R. § 245a.2(k)(3)(i) appears to refer to an older version of section 212(a) where paragraph (9) described applicants who are inadmissible based on criminal activity, rather than the current version of section 212(a) that describes applicants who are inadmissible based on having been deported.

interest. Therefore, the director erred in finding that the relevant provisions of section 212(a)(9) of the Act cannot be waived. This aspect of the director's decision is withdrawn.

In this instance there is no need to address the issue of whether the applicant has demonstrated eligibility for a waiver of inadmissibility because the applicant has been determined to be otherwise ineligible for temporary resident status. *Matter of Martinez-Torres*, 10 I&N Dec. 776 (Reg. Comm. 1964) and *Matter of J-F-D-*, 10 I&N Dec. 694 (Reg. Comm. 1963) relate to applications for permission to reapply for admission after deportation, but these decisions are on point and relevant to the current proceeding. In each case the Regional Commissioner found that no purpose would be served in waiving inadmissibility because the applicant was ineligible for the overall benefit of lawful residence. The applicant has failed to establish by a preponderance of the evidence that he continuously resided in the United States throughout the requisite period and is, consequently, ineligible for temporary resident status. Therefore, no purpose would be served in waiving inadmissibility in this case.

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