

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**

L

FILE:

MSC-05-032-10028

Office: MIAMI

Date:

OCT 16 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.

  
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, Miami. 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. Specifically, the director found that the applicant had provided insufficient evidence that he resided in the United States during 1985.

On appeal, the applicant submitted additional evidence relating to his claim of residence in the United States during 1985.

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 November 1, 2004. 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 address: [REDACTED], Miami, Florida. The applicant appeared to indicate that he resided at this address from 1980 to 1998. At part #33 where applicants were asked to list all employment in the United States since entry, the applicant listed the following positions: Laborer for [REDACTED] from 1980 to 1986 and laborer for [REDACTED] from 1986 to present.

In an attempt to establish continuous unlawful residence in this country during the requisite period, the applicant initially provided only the following documents relating to the requisite period:

- A copy of the applicant's Social Security statement, listing earnings for every year from 1981 through 1988, except for the year 1985. This document corresponds with a Social Security number ending with the four digits [REDACTED];

A copy of the applicant's Social Security card, listing his Social Security number as [REDACTED]; and

- A copy of a "Chauffeurs Registration" for Metropolitan Dade County, Florida, expiring December 31, 1986 and containing a photograph of the applicant holding a card listing his name and the date "12-86." This document is inconsistent with the applicant's Form I-687, where he failed to indicate that he had worked as a chauffeur during the requisite period.

On appeal, the applicant provided the following documents:

- An original "Chauffeurs Registration" for Metropolitan Dade County, Florida, expiring December 31, 1986 and containing a photograph of the applicant holding a card listing his name and the date "12-86." As already mentioned, this document is inconsistent with the applicant's Form I-687, where he failed to indicate that he had worked as a chauffeur during the requisite period. In addition, this document appears to have been altered. Specifically, the lamination on the document appears to have been pierced so that the photograph in the document could be replaced. The appearance of alteration casts additional doubt on the authenticity of the document and on the applicant's claim of continuous residence in the United States;
- A photocopy of the applicant's marriage certificate, indicating that the applicant's marriage to [REDACTED] was registered in Florida on January 17, 1986. This document constitutes some evidence of the applicant's presence in the United States in January 1986;
- An affidavit from [REDACTED], which states that the affiant has been living in the United States since 1972, that she has known the applicant since they were living in Haiti, and that the applicant has been living in the United States continuously from August 30, 1980 to the present. This affidavit lacks detail regarding how the affiant met the applicant, the region where the applicant resided in the United States, and the affiant's frequency of contact with the applicant during the requisite period. As a result, this affidavit will be given only nominal weight in determining whether the applicant has established that he resided in the United States during the requisite period; and
- An affidavit from [REDACTED], which states that the affiant has been living in the United States since 1979, that he has known the applicant since they were living in Haiti, and that the applicant has been living in the United States continuously from August 30, 1980 to the present. This affidavit lacks detail regarding how the affiant met the applicant, the region where the applicant resided in the United States, and the affiant's frequency of contact with the applicant during the requisite period. As a result, this affidavit will be given only nominal weight in determining whether the applicant has established that he resided in the United States during the requisite period.

The applicant also provided a written statement on appeal, where he indicated that his chauffer license was issued in December 1984 and expired in December 1986 and shows he was living in the United States for the entire year of 1985. The applicant failed to provide any independent, objective evidence that his license was issued in December 1984. The applicant also neglected to explain his failure to list his employment as a chauffer on his Form I-687.

The record also includes a Biographic Information Form G-325A signed by the applicant under warning of severe penalties provided by law for knowingly and willfully falsifying or concealing a material fact on August 20, 1987. Where the Form G-325A requests that applicants list all employment in the last five years, the applicant listed the following employment positions: Driver for Dixie Building from March 1981 to March 1985; finisher for "Capeleting Brother" from March 1985 to June 1987; and finisher for Homestead Paving Co. from June 1987 to the present time. This information is inconsistent with the Form I-687 where the applicant failed to list employment as a driver, listed employment for Capety Brother Concrete from 1980 to 1986 rather than 1985 to 1987, and failed to list employment with Homestead Paving Co. This information also appears to be inconsistent with the applicant's statement on appeal because it fails to indicate that the applicant was employed as a chauffer after March 1985. These inconsistencies cast serious doubt on the applicant's claim to have resided in the United States continuously throughout the requisite period.

In summary, the applicant has provided evidence of his residence in the United States during the requisite period that is inconsistent with his statements on his Form I-687 and the Form G-325A or lacks sufficient detail. 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 Form I-687 and the documents he submitted, and given his reliance upon documents with minimal probative value to establish his residence in the United States throughout 1985, 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.

It is noted that the record includes a Medical Examination of Aliens Seeking Adjustment of Status Form I-693 signed by a [REDACTED] on March 5, 1988, and submitted in connection with the applicant's Form I-485 Application for Permanent Residence that was denied on April 21, 1988. Where the form asks physicians to indicate the results of a serologic test for the HIV antibody, [REDACTED] indicated that the result for the test of the applicant was positive. Any applicant who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services) to have a communicable disease of public health significance, which shall include infection with the etiologic agent for acquired immune deficiency syndrome, is inadmissible. Section 212(a)(1)(A)(i) of the Act, 8 U.S.C. § 1182(a)(1)(A)(i). The information provided by [REDACTED] indicates that the applicant has been infected with the etiologic agent for acquired immune deficiency syndrome, also known as human

immunodeficiency virus or HIV. Therefore, the applicant appears to be inadmissible to the United States on this basis. The applicant may be eligible for a waiver of this ground of inadmissibility pursuant to Section 212(g)(1) of the Act, 8 U.S.C. § 1182(g)(1).

It is also noted that the record contains a notice from the Miami-Dade Police Department, Police Operations Bureau dated August 24, 2006. This document indicates that copies of misdemeanor arrest records exist for the applicant for the following three case numbers: [REDACTED], [REDACTED], and [REDACTED]. This indicates that the applicant may be ineligible for temporary resident status under 8 C.F.R. § 245a.2(c)(1) as an applicant who has been convicted of three misdemeanors. The record contains insufficient evidence to make this determination.

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