

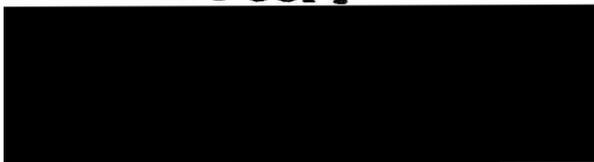
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
MSC-06-089-11085

Office: SAN DIEGO Date: SEP 05 2008

IN RE: Applicant: [REDACTED]

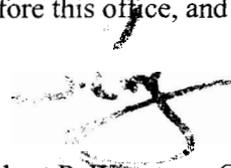
APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the
Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case 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, 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, San Diego. 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 did not specifically address the evidence submitted, but 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.

Accordingly, the AAO has conducted a *de novo* review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(d)(6). The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) (“On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO’s *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

On appeal, the applicant requests that the “Service reconsider the decision, and give me an opportunity to continue with my application.”

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)(1).

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)(1) 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).

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 December 28, 2005. At Part 30 of the Form I-687 application, applicants were asked to list all addresses in the United States. The applicant indicated that he lived at [REDACTED] in Chula Vista, California. He did not indicate the date that he began living at that address. Additionally, he did not list any employers or associations on his application. The only evidence submitted consisted of ten declarations described below:

- A declaration from [REDACTED], who indicates that he “saw the applicant at his house” working for his parents at their home in La Mesa, California in February 1980. He further indicates that he does not know how the applicant entered the United States. He does not state how he dates his acquaintance with the applicant, where the applicant resided in the United States, or how frequently he had contact with him. Furthermore, the declarant states that from 1981 until 1983 he was working as a missionary in Guatemala and from 1981 until 1988 he was a student at Brigham Young University in Utah. The declarant does not indicate that he has direct, personal knowledge that the applicant was living in the

United States for the duration of the requisite period, since he was out of the country for nearly three years from 1981 until 1983 and then from 1983 until 1988 he was out of state. His declaration will be given minimal weight.

- Declarations from [REDACTED] and [REDACTED], all Mexican citizens. All four declarants indicate that they were living in Mexico during the relevant period and that the applicant told them that he was going to go to the United States, indicating that they did not have direct, personal knowledge of the applicant's residency in the United States during the relevant period. None indicated where the applicant lived during the requisite period or provided any details of the applicant's United States residency. For these reasons, all of these declarations have very limited probative value as evidence of his continuous residence in the United States since a date prior to January 1, 1982.
- A declaration from [REDACTED], the applicant's brother. Mr. [REDACTED] indicates that he learned that his brother moved to the United States because "he called me from California and gave me his phone number and address." The address is not provided by the declarant. Furthermore, the declarant indicates that he visited the applicant in California "on various occasions." He does not state how or when the applicant entered the United States, where the applicant resided in the United States, or how frequently he had contact with him. Due to the lack of direct, personal knowledge of the applicant's residency and the lack of detail provided by [REDACTED] his declaration will be given minimal weight.
- The remaining four declarants, [REDACTED] and [REDACTED] all indicate that they resided in Mexico during the entire relevant period, and that they learned of the applicant's United States residency by speaking to the applicant on the telephone. They also indicate that the applicant visited them in Mexico three times during the relevant period, in 1983, 1985, and 1987. Due to their lack of direct, personal knowledge regarding the applicant's residency during the relevant period, the declarants' statements will be accorded nominal weight.

While an applicant's failure to provide evidence other than affidavits shall not be the sole basis for finding that he or she failed to meet the continuous residency requirements, an application which is lacking in contemporaneous documentation cannot be deemed approvable if considerable periods of claimed continuous residence rely entirely on declarations which are considerably lacking in certain basic and necessary information. As discussed above, the declarants' statements are significantly lacking in detail and do not establish that they actually had personal knowledge of the events and circumstances of the applicant's residence in the United States. Few of the declarants provided much relevant information beyond acknowledging that they spoke to the applicant on the telephone during the relevant period. Overall, the declarations provided are so deficient in detail that they can be given no significant probative value.

As is stated above, 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). The applicant has been given the opportunity to satisfy his burden of proof with a broad range of evidence pursuant to 8 C.F.R. § 245a.2(d)(3).

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 declarations with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application 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