

PUBLIC COPY

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



**U.S. Citizenship
and Immigration
Services**

4



FILE:



Office: LOS ANGELES

Date: **SEP 15 2006**

MSC-05-298-10144

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:

SELF REPRESENTED

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. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed or rejected, 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.

A handwritten signature in black ink, appearing to read "R. 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 District Director, Los Angeles. 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 denied the application on June 7, 2006.** The director determined that the applicant failed to establish, by a preponderance of the evidence, continuous unlawful residence in the United States throughout the requisite period. In particular, the director noted statements made by the applicant in his testimony before an immigration officer conflicted with information contained in affidavits submitted by the applicant in support of his application.

On appeal the applicant states that he provided incorrect information at his interview because his interpreter failed to arrive and, therefore, he was unable to properly answer the questions asked of him by the officer. The applicant has not submitted additional evidence in support of his appeal.

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).

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 applicant 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 issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided in the United States for the duration of the requisite period. Here, the applicant has not met his burden of proof.

The applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on July 25, 2005. The applicant submitted the following documents in support of his application:

- An affidavit from [REDACTED] dated June 1, 2006. The affiant states that he is the owner of [REDACTED] and that his company employed the applicant as an unloader from 1984 until 1986. The applicant did not list this employment on his Form I-687 application. Further, the affidavit is deficient in that it does not comply with the regulation relating to past employment records. For example, the affidavit does not provide the applicant’s address at the time of employment, does not provide the exact period of employment and does not state whether or not the information was taken from official company records. 8 C.F.R. § 245a.2(d)(3)(i). Given these deficiencies, this affidavit will be given minimal weight as evidence of the applicant’s residence in the United States during the requisite period.
- A statement from [REDACTED] dated June 4, 2006. The declarant states that the applicant is residing with him at [REDACTED] in Sylmar, California and that he and the applicant have lived together since July of 1996. The record also contains a letter from [REDACTED] dated December 16, 2004, in which he states that the applicant is residing with him at [REDACTED] and that he has known the applicant since 1982. In neither of these statements does the declarant describe the nature and frequency of his contact with the applicant during the requisite period. Given these deficiencies, this statement has only minimal weight as evidence of the applicant’s residence in the United States during the requisite period.

- An affidavit from [REDACTED] dated December 16, 2005. The affiant is the applicant's aunt. The affiant states that she has known the applicant since birth, that the applicant resides at [REDACTED] in Sylmar, California, that the applicant was employed on a full-time basis and that the applicant is a stable and responsible person. The affiant does not provide any information regarding the date of the applicant's initial entry into the United States nor does the affiant claim to have knowledge that the applicant resided in the United States during the requisite period. Because this affidavit does not provide any information relating to the applicant's residence in the United States during the requisite period, it will not be given any weight as evidence of the applicant's residence in the United States during the requisite period.
- An affidavit from [REDACTED] dated December 16, 2005. The affiant states that he has known the applicant since 1980. However, the affiant does not explain how or where he met the applicant. The affiant does not even specify whether or not he met the applicant in the United States. Further, the affiant does not claim to have any knowledge of the applicant's residence in the United States during the requisite period and does not provide any information regarding the nature and frequency of his contact with the applicant during the requisite period. Because of these deficiencies, this statement will not be given any weight as evidence of the applicant's residence in the United States during the requisite period.
- An affidavit from A [REDACTED] z dated December 16, 2005. The affiant states that he has known the applicant since 1982. The affiant does not state whether or not he met the applicant in the United States. Therefore, this statement will be given nominal weight as evidence of the applicant's residence in the United States during the requisite period.
- An affidavit from [REDACTED] dated December 16, 2005. The affiant states that he has known the applicant since 1980 and that he and the applicant have worked together in the past. The affiant does not state whether or not he met the applicant in the United States. The affiant does not specify where or when he and the applicant worked together. Further, the affiant does not claim to have any knowledge of the applicant's residence in the United States during the requisite period. Therefore, this affidavit will not be given any weight as evidence of the applicant's residence in the United States during the requisite period.
- An affidavit from [REDACTED] dated December 16, 2005. The affiant states that she has known the applicant since 1981. The affiant does not explain the circumstances under which she met the applicant or how she dates her initial acquaintance with the applicant. The affiant does not even specify whether or not she met the applicant in the United States. Further, the affiant does not claim to have any knowledge of the applicant's residence in the United States during the requisite period. Therefore, this affidavit will not be given any weight as evidence of the applicant's residence in the United States during the requisite period.

- An affidavit from [REDACTED] dated December 16, 2005. The affiant states that he has known the applicant since 1980. The affiant does not explain the circumstances under which he met the applicant or how he dates his initial acquaintance with the applicant. The affiant does not even specify whether or not she met the applicant in the United States. Further, the affiant does not claim to have any knowledge of the applicant's residence in the United States during the requisite period. Therefore, this affidavit will not be given any weight as evidence of the applicant's residence in the United States during the requisite period.
- An affidavit from [REDACTED] dated October 14, 2005. The affiant states that he has known the applicant since 1987. The affiant does not claim to have personal knowledge of the applicant's residence in the United States during the requisite period. The affiant does not provide details regarding the frequency or nature of his contact with the applicant during the requisite period. Given these deficiencies, the affidavit has little probative value and will be given minimal weight as evidence of the applicant's residence in the United States during the requisite period.
- An affidavit from [REDACTED] dated December 16, 2005. The affiant claims to have known the applicant for only one year prior to the date of the affidavit. Because the affiant does not claim to have knowledge relating to the requisite period, this affidavit will not be given any weight as evidence of the applicant's residence in the United States during the requisite period.
- An affidavit from [REDACTED] dated December 16, 2005. The affiant states that he has known the applicant "for over 9 years." Because the affiant does not provide information relating to the requisite period, this affidavit will not be given any weight as evidence of the applicant's residence in the United States during the requisite period.
- An affidavit from [REDACTED] dated December 16, 2005. The affiant claims to have known the applicant "for about 8 or 9 years." Because the affiant does not provide information relating to the requisite period, this affidavit will not be given any weight as evidence of the applicant's residence in the United States during the requisite period.

The applicant also submitted copies of identification cards issued to him by the California Department of Motor Vehicles. One was issued on July 18, 1983 and the other was issued on May 14, 1984. The applicant also submitted copies of driver licenses issued to him by the California Department of Motor Vehicles, one issued on August 29, 1984 and the other issued on August 31, 1990. In addition, the applicant submitted a copy of an Information Request report from the California Department of Motor Vehicles. This document indicates that an identification card was mailed to the applicant on June 15, 1984 and that a driver license was issued to him on August 31, 1990. The applicant has also submitted a copy of a letter from the Internal Revenue Service dated March 19, 1984. The letter is addressed to the applicant at a post office box in San Ysidro, California and relates to the tax year ended December 31, 1983. Although these documents provide

some evidence that the applicant was present in the United States in 1983 and in 1984, they are insufficient to establish his residence in the United States throughout the requisite period.

The record also contains a copy of the applicant's marriage certificate issued by the civil authorities in Mexico. According to this document, the applicant was married in Mexico on June 5, 1987. This document lists the applicant's place of residence as [REDACTED]. This indicates that the applicant was residing in Mexico during the requisite period and detracts from the credibility of his claim to have resided in the United States throughout the requisite period.

In summary, the applicant has not provided sufficient evidence in support of his claim of residence in the United States during the entire requisite period. 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 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. 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.