

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



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

**PUBLIC COPY**

LI



FILE: [Redacted]  
MSC-06-095-13127

Office: PHILADELPHIA

Date: **SEP 22 2008**

IN RE: Applicant: [Redacted]

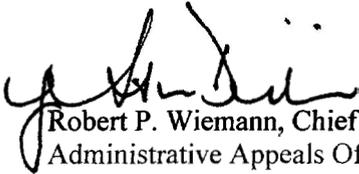
APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:



**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, Philadelphia. 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.

On appeal, counsel asserts the applicant's claim of eligibility for temporary resident status. Counsel also asserts that the applicant has demonstrated that he entered the United States in May of 1981 and that he has submitted credible evidence sufficient to establish his residence in the United States during the requisite period.

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. See 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 January 3, 2006.

The applicant submitted as evidence copies of receipts for registered mail with United States Postal stamps dated from July 26, 1988 through October 17, 1989. He also submitted copies of money order receipts dated from May 9, 1988 through May of 1989. Although these documents are some evidence of the applicant’s presence in the United States since May of 1988, it is insufficient to show his continuous unlawful residence in the country throughout the requisite period.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted the following affidavits as evidence:

- An affidavit dated March 13, 2006 from [REDACTED] in which he stated that he first met the applicant and his wife during Thanksgiving in 1981 when they came to his parents' home in Pennsylvania to serve the holiday dinner. He also stated that they have kept in touch with each other even after the applicant settled in Philadelphia. The affiant fails to specify the applicant's place of residence. The affiant also fails to specify the frequency with which he saw and communicated with the applicant during the requisite period. Because the affidavit is lacking in detail, it can be afforded only minimal weight in establishing the applicant's residence in the United States during the requisite period.
- A fill-in-the-blank affidavit dated March of 2006 from [REDACTED] in which he stated that he met the applicant in 1981 in New York at a Paraguayan festival and that they stayed in contact with each other through the years. He also indicated that the applicant resided in Jamaica Plain, Massachusetts from May of 1981 through August of 1991. Here, the affiant fails to specify the frequency with which he saw and communicated with the applicant during the requisite period. The affiant fails to demonstrate that the addresses he listed as the applicants' are based upon his first hand knowledge of the applicant's whereabouts and circumstances of his presence in the United States during the requisite period. Because this affidavit is lacking in detail, it can be afforded only minimal weight in establishing the applicant's residence in the United States during the requisite period.
- A fill-in-the-blank affidavit dated February 18, 2006 from L [REDACTED] in which she stated that she has known the applicant since May of 1981 when he and his wife came to live with her and that they have been friends ever since. She also indicated that the applicant resided in Jamaica Plain, Massachusetts from May of 1981 to August of 1991. Although the affiant stated that the applicant resided in Jamaica Plain, Massachusetts from May of 1981 to August of 1991, she failed to specify the applicant's place of residence, including her address at the time the applicant allegedly resided with her. Because the affidavit lacks detail, it can be afforded only minimal weight in establishing the applicant's residence in the United States during the requisite period.

In denying the Form I-687 application, the director noted that the applicant had submitted evidence that was not sufficient to demonstrate his eligibility for temporary resident status.

On appeal, counsel reasserts that the applicant has submitted sufficient evidence to establish his eligibility for temporary resident status. The applicant submits the following attestations as evidence:

- An English translated declaration dated March 5, 2007 from [REDACTED] in the city of Bella Vista, Paraguay in which she states that the applicant is her brother-in-law and that he married [REDACTED] in May of 1981, and in the same month traveled to the United States.

- An English translated declaration dated March 5, 2007 from [REDACTED] in the city of Bella Vista, Paraguay in which she states that the applicant is her brother and that he traveled to the United States in May of 1981 after marrying [REDACTED]
- An English translated declaration dated March 5, 2007 from [REDACTED] in the city of Bella Vista, Paraguay in which he states that the applicant is his brother and that he traveled to the United States in May of 1981 after marrying [REDACTED].
- An English translated declaration dated March 5, 2007 from [REDACTED] in the city of Bella Vista, Paraguay in which he states that the applicant is his son and that he married [REDACTED] in May of 1981, and in the same month traveled to the United States.
- An English translated declaration dated March 5, 2007 from [REDACTED] in the city of Bella Vista, Paraguay in which she states that the applicant is her son and that he traveled to the United States in May of 1981 after marrying [REDACTED]

There is nothing in the evidence to demonstrate that the declarants have ever lived in the United States. In addition, there is nothing in the declarants' statements to demonstrate that they have first hand knowledge of the applicant's entry date into the United States. The declarants have failed to specify the frequency with which they saw and communicated with the applicant in the United States, or any other detail that would lend credence to their claimed knowledge of the applicant presence in the country. Because the declarations are significantly lacking in detail, they can be afforded little weight in establishing that the applicant resided in the United States during the requisite period.

The applicant also submitted the following affidavits as evidence:

- An affidavit from [REDACTED] in which he stated that he has known the applicant since May of 1981 when he was living with the affiant's mother, [REDACTED] at her apartment, and that the applicant lived with his mother from May of 1981 to August of 1991. He also stated that since 1981 he has kept in close contact with the applicant and has communicated frequently with him.
- An affidavit from [REDACTED] in which he states that he has known the applicant since May of 1981 when the applicant was living at his mother's apartment.
- An affidavit from [REDACTED] in which he states that he has known the applicant and his wife since 1981 as members of the Paraguayan community in Jamaica Plain, Massachusetts.

The affidavits are insufficient to support the applicant's claimed continuous unlawful residence in the United States during the requisite period. Here, the affiants fail to specify the applicant's places of residence, and [REDACTED] also fails to specify when and where he met the applicant. Neither Mr. [REDACTED] specified the frequency with which they saw and communicated with the applicant during the requisite period. Because the affidavits are significantly lacking in detail, they can be afforded little weight in establishing that the applicant resided in the United States during the requisite period.

The applicant submitted the following letter as evidence:

A letter from [REDACTED] Pastor of Our Lady of Lourdes Parish in Jamaica Plain, Massachusetts in which he states that he has been at the church since 1979 and that the applicant was a member of the church from 1981 to 1991. He also states that the applicant remembers him by name, other active member's names, and names of various priests who served the Hispanic community in the different area parishes. The declarant's statement is inconsistent with the applicant's statement on his Form I-687 application, at part #31 where he was asked to list all associations or affiliations with clubs, religious organizations, churches, unions, or businesses, and the applicant stated "none." In addition, the declaration does not conform to regulatory standards for attestations by churches at 8 C.F.R. § 245a.2(d)(3)(v). Specifically, the declaration does not state the address where the applicant resided during the alleged membership period, nor does it establish the origin of the information being attested to. Because this letter does not conform to regulatory standards, and because it conflicts with other evidence in the record, it can be accorded little weight in establishing that the applicant resided in the United States since before January 1, 1982.

In the instant case, the applicant has failed to provide sufficient, credible and probative evidence to establish his continuous unlawful residence in the United States during the requisite period. He has failed to overcome the issues raised by the director. The applicant has submitted declarations from persons who never appear to have lived in the United States. He also submits attestations that are lacking in detail and are contrary to statements that he made on his Form I-687 application.

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 affidavits that are inconsistent with his statements, are lacking in detail, and that have little 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.

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