

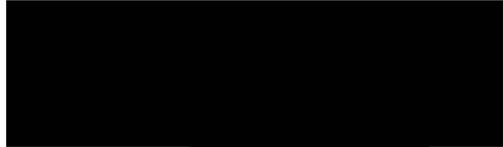
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U.S. Citizenship
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FILE: [REDACTED]
MSC-06-080-10685

Office: LOS ANGELES

Date: SEP 22 2008

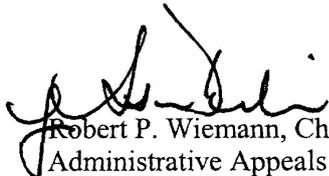
IN RE: Applicant: [REDACTED]

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: 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. 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, Los Angeles. The decision is now before the Administrative Appeals Office 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 noted in his decision that during the applicant's interview on April 19, 2006 with immigration officials, he stated under oath that he initially entered the United States in 1983. The director denied the application finding that the applicant had not met his burden of proof and that he was therefore not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, the applicant asserts that he entered the United States in February of 1980 when he was six years old and that his statement under oath was inaccurate information. The applicant submits affidavits as evidence.

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).

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 of proceeding shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS), on December 13, 2005.

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

- **An affidavit dated December 13, 2005 from [REDACTED] in which he stated that he has known the applicant for over 20 years and that the applicant has lived in Los Angeles, California since November of 1983. Here, the affiant fails to indicate under what circumstances he met the applicant, the frequency with which he saw and communicated with the applicant, or any other detail that would lend credence to his claimed knowledge of the applicant and the applicant's residence in the United States during the requisite period. Because the declaration is significantly lacking in detail, it can be afforded only minimal weight in establishing that the applicant resided in the United States during the requisite period.**

In denying the application the director noted that the applicant admitted under oath that he had initially arrived in the United States in 1983, and was therefore statutorily ineligible for the immigration benefit sought.

On appeal, the applicant asserts that he came to the United States in February of 1980 and that his statement to the immigration officers during his interview concerning his entry into the United States was inaccurate. He submits the following affidavits:

- An affidavit from [REDACTED] who states that he has known the applicant since February of 1980 and that the applicant has been living in Los Angeles, California since that time. He also states that he and the applicant attended school together. Here, the affiant fails to indicate under what circumstances he met the applicant, the frequency with which he saw and communicated with the applicant, or any other detail that would lend credence to his claimed knowledge of the applicant and the applicant's residence in the United States during the requisite period. He has failed to specify the name of the school he attended with the applicant, the years attended, and the location of the school. Although the affiant claims to have known the applicant since February of 1980, he has failed to mention a responsible adult who should have been responsible for the applicant's care and upkeep during that requisite period. Because the affidavit is significantly lacking in detail, it can be afforded only minimal weight in establishing that the applicant resided in the United States during the requisite period.
- An affidavit from [REDACTED] in which he stated that he has known the applicant since 1980 and that the applicant has been in Los Angeles, California since that time. He also states that he and the applicant grew up together and that they went to school together. The affiant fails to indicate under what circumstances he met the applicant, the frequency with which he saw and communicated with the applicant, or any other detail that would lend credence to his claimed knowledge of the applicant and the applicant's residence in the United States during the requisite period. He has failed to specify the name of the school he attended with the applicant, the location of the school, and the years attended. Although the affiant claims to have known the applicant since February of 1980, he has failed to mention a responsible adult who should have been responsible for the applicant's care and upkeep during that requisite period. Because the affidavit is significantly lacking in detail, it can be afforded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

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 grounds for the director's denial. Although the applicant asserts on appeal that he has resided in the United States since February of 1980, he has failed to substantiate his claim. His initial statement to the interviewing officers was that he entered the United States in 1983. On the applicant's I-687 application, part #31 where the applicant is asked to list his places of residence in the United States, he does not list an address in the country until July of 1983. Therefore, it cannot be concluded that the applicant resided continuously in the United States for the requisite period.

Although the applicant claims to have resided in the United States since he was 6 years old, he provided neither school records nor medical records to substantiate such claim. He also failed to

provide any independent documentary evidence from or about any responsible adult or guardian to indicate the circumstances under which he survived in the United States during his childhood and throughout the requisite period.

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 inconsistency of the applicant's statements and 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.

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