

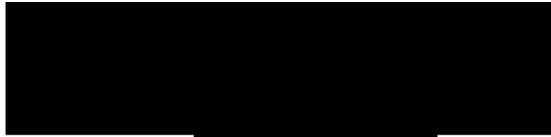
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U.S. Citizenship  
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FILE: [REDACTED]  
MSC-05-319-15000

Office: SAN FRANCISCO

Date: SEP 23 2008

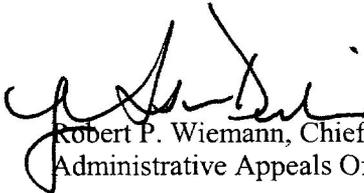
IN RE: Applicant: [REDACTED]

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, San Francisco. 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 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 has submitted all the necessary documentation that was requested by the Service.

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.

An alien shall be regarded as having resided continuously in the United States if at the time of filing an application for temporary resident status, no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, through the date the application is filed, unless the alien can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the alien was maintaining residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.2(h)(1).

If the applicant's absence exceeded the 45-day period allowed for a single absence, it must be determined if the untimely return of the applicant to the United States was due to an "emergent reason." Although this term is not defined in the regulations, *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), holds that emergent means "coming unexpectedly into being."

The applicant has the burden of proving by a preponderance of the evidence that he 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 August 15, 2005.

The applicant submitted as evidence copies of Travel Express money gram receipts dated 2000, his personal income tax records and wage statements dated 1989 through 2006, utility bills dated 2000 through 2006, a lease agreement dated 1994, a marriage certificate issued by the state of California and dated 1995, a merit gram and certificate of achievement dated 1994 and 1995 respectively. These documents are dated subsequent to the requisite period and, therefore, are irrelevant to the applicant's claim of continuous unlawful residence in the United States.

The applicant also submitted copies of two handwritten rent receipts dated January 2, 1981 and March 1, 1986. The receipts are too sparse and therefore, they can be afforded only minimal weight in establishing the applicant's residence in the United States during the requisite period. The applicant also submitted copies of electric bills and IRS Form W-2, Wage and Tax Statements dated 1981 through 1983. These documents appear to have been altered as the original dates seem to have been covered-over and new dates have been inserted in their place. It is also noted by the AAO that the earning amounts on the applicant's IRS W-2 statements at parts # 10, 11, and 13 are identical for 1981, 1982, and 1983. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the apparent alteration of the documents.

The applicant also submitted the following attestations as evidence:

- An employment letter, dated November 16, 1986, from [REDACTED] former general manager for [REDACTED] Farm Laborer Contractor, in which he stated that the company employed the applicant seasonally from January of 1982 to April of 1986 as a farm laborer. He further stated that the applicant was paid in cash and that the company did not keep proper employment records for him. He also stated that his company ceased its operations in September of 1987, and that the declaration is based upon personal knowledge. Although generally consistent with the applicant's claim of employment for [REDACTED] Farm Laborer during the requisite period, the declaration does not conform to regulatory standards for attestations by employers, which are set forth at 8 C.F.R. § 245a.2(d)(3)(i). Specifically, the declaration does not specify the address(es) where the applicant resided throughout the claimed employment period, is not notarized or attested to under penalty of perjury, and does not indicate the employer's willingness to come forward and give testimony if requested. Because this declaration does not conform to regulatory standards, it can be accorded 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 1973, and that they met at the same mobile home park where they currently live. The affiant lists his address as [REDACTED] California.

Although the affiant states that he met the applicant in 1973 and that they have lived at the same mobile home park, the applicant indicated on his Form I-687 application that he did not reside at the above noted address until 1998. It is also noted that the applicant claims to have initially entered the United States in 1980. Because the affidavit is inconsistent with statements made by the applicant on his Form I-687 application, 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 and the applicant have worked together at seasonal jobs, and were then reunited while working elsewhere. He lists the applicant's address as: [REDACTED] from 1981 to 1993. This statement is inconsistent with what the applicant indicated on his Form I-687 application at part #30 where he listed the above address as his place of residence from 1981 to 1989. It is also noted by the AAO that the affiant fails to specify the dates he and the applicant were employed together. It is further noted that the affiant fails to demonstrate that his information pertaining to the applicant's address is based upon his first hand knowledge of the applicant's whereabouts and circumstances. Because the affidavit is inconsistent with statements made by the applicant on his Form I-687 application and is 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 had failed to submit evidence sufficient to establish his continuous unlawful presence in the United States throughout the requisite period.

On appeal, the applicant reasserts his claim of eligibility for temporary resident status. He submits evidence that was previously received and is contained in the record of proceeding.

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 throughout the requisite period. He has failed to overcome the issues raised by the director. The applicant submitted evidence in this case that is dated subsequent to the requisite period. He has also submitted contradictory attestations and documents whose dates appear to have been altered. Therefore, it cannot be concluded that the applicant has submitted sufficient evidence to demonstrate that he has continuously resided in the United States for 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 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 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.