

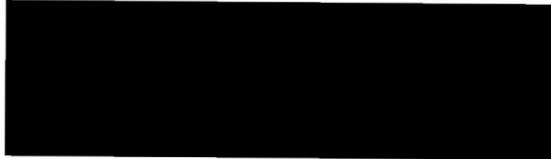
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**U.S. Citizenship
and Immigration
Services**

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FILE:



Office: DETROIT

Date:

SEP 23 2008

MSC 06 101 13598

IN RE: Applicant:



APPLICATION:

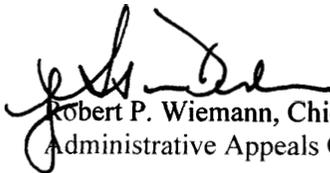
Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a.

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. 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, Detroit. The matter 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 (the 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 during the requisite period. On appeal, the applicant submitted additional 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 Immigration and Nationality Act (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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant’s own testimony. 8 C.F.R. § 245a.2(d)(6).

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.* 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 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.

On the Form I-687 application, which the applicant signed on December 13, 2005, the applicant was required to provide an exhaustive list of his residences in the United States since his first entry. The applicant stated that he had lived [REDACTED] and then moved to [REDACTED] in City, Michigan. The applicant did not state when he lived at those addresses and did not list any other addresses.

On a G-325 Biographic Information form, the applicant was required to list his addresses during the previous five years. The applicant indicated that he lived at [REDACTED] from January 2000 to October 2001, at [REDACTED] from October 2002 to November 2003, at [REDACTED] from October 2003 to November 2004, and at [REDACTED] from January 2005 to December 2006. Although this residential history is sufficient to satisfy the requirements of the G-325, this office notes that, with the Form I-687 application, as was stated above, the applicant was obliged to provide a history of all of his residences in the United States since his first entry. The applicant claims to have resided continuously in the United States since before January 1, 1982. The five-year residential history, beginning in January 2000, is insufficient.

The applicant was also required to provide, on the Form I-687 application, an exhaustive list of all of his employment in the United States since January 1, 1982. The applicant did not identify any employers, present or previous.

On his Form G-325, however, the applicant stated that he worked as a painter for Zefs Painting, at [REDACTED] from February 2000 to September 2004; and for Capitol Painting from November 2004 to July 2005.

The applicant was required, on the Form I-687 application, to provide an exhaustive list of his absences from the United States since January 1, 1982. The applicant did not list any absences. Whether the applicant was representing that he had not left the United States since January 1, 1982 or merely declining to provide yet more required information is unclear.

The pertinent evidence in the record is described below.

- The record contains a form declaration, dated April 4, 2006, from [REDACTED] [REDACTED] did not sign that declaration and it will be accorded no evidentiary weight.

The heading on that declaration reads, "Affidavit." An attestation at the bottom of the declaration states,

On this 4 [sic] day of April 2006, before me [REDACTED] personally appeared [REDACTED] the person(s) who sworns [sic] and says that all the information in this document is true and correct to the best of their [sic] knowledge.

A scrap of paper submitted with that declaration bears the signature and seal of [REDACTED] [REDACTED] a Michigan notary public. That scrap was apparently cut from the bottom of an affidavit or other notarized document. The notary neither signed nor sealed the instant declaration.

In addition to the declaration not being signed by the declarant, then, it contains no indication that notary [REDACTED] administered an oath to the applicant, or that any other person authorized to administer oaths administered one. The declaration would not, therefore, be accorded the added evidentiary weight of an affidavit even if it were signed by the declarant.

Further still, that the declaration purports to have been attested to by notary [REDACTED] but is neither signed nor sealed by her, apparently indicates that the document was fabricated in a poor attempt to represent it as a sworn affidavit.

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. Further, the applicant must resolve any inconsistencies in the record with competent, independent, objective evidence. Attempts to explain or reconcile such inconsistencies, absent competent objective evidence sufficient to demonstrate where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Not only does the April 4, 2006 declaration entirely lack credibility and evidentiary value of its own, it detracts from the evidentiary value of the applicant's remaining evidence.

- The record contains a letter, dated January 23, 2007, from [REDACTED] of Detroit, Michigan. [REDACTED] stated that the applicant entered the United States with his parents at the age of four, prior to January 1, 1982. The declarant did not state her basis for this assertion.

The record contains no other evidence pertinent to the applicant's residence in the United States during the salient period.

In a Notice of Intent to Deny (NOID), dated March 29, 2006, the director stated that the applicant failed to submit evidence sufficient to demonstrate his entry into the United States prior to January 1, 1982, and continuous residence during the requisite period. The director granted the applicant thirty days to submit additional evidence. In response the applicant submitted the April 4, 2006 declaration of [REDACTED], which is described above.

In the Notice of Decision, dated January 3, 2007, the director denied the application based on the reasons stated in the NOID. On appeal, the applicant submitted the January 23, 2007 letter of [REDACTED], which is described above.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate entry into the United States prior to January 1, 1982, and continuous residence during the requisite period.

The declaration of [REDACTED] will be accorded no weight, as was explained above.

Even standing alone, the declaration of [REDACTED] would be accorded no evidentiary weight because the declarant merely stated the conclusion that the applicant entered the United States prior to January 1, 1982 and remained during the requisite period, without stating her basis for that conclusion. Even if that declaration were, on its own, entitled to some evidentiary weight, that evidentiary weight would be seriously damaged by the submission of the falsified declaration from [REDACTED].

The evidence must be evaluated not by its quantity alone but by its quality. 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 its amenability to verification.

None of the applicant's evidence can be accorded any evidentiary weight. Given the paucity of credible supporting documentation the applicant has failed to meet his burden of proof and failed to establish continuous residence in an unlawful status in the United States during the requisite period. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act. The application was correctly denied on this basis, which has not been overcome on appeal. The appeal will be dismissed.

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



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