



U.S. Citizenship  
and Immigration  
Services

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[Redacted]

FILE:

MSC 05 194 10371

Office: LOS ANGELES

Date:

**APR 29 2009**

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:

[Redacted]

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.

John F. Grissom  
Acting 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 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, and a Form I-687 Supplement, CSS/Newman (LULAC) Class Membership Worksheet. The director denied the application because the applicant did not establish that he continuously resided in the United States for the duration of the requisite period

On appeal, counsel states the applicant timely responded to the director's request for evidence dated February 5, 2007 and forwards a copy of the evidence submitted. Counsel requests that the application be approved.

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) 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).

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 the evidence

for relevance, probative value, and credibility, within the context of the totality of the evidence, to determine whether the facts to be proven are 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.

The pertinent evidence in the record is described below.

1. The applicant’s receipt dated August 13, 1981 from Travelers Express showing his address as [REDACTED].
2. The applicant’s General Money Order receipt dated February 1981 showing his address as [REDACTED].
3. The applicant’s receipt dated January 21, 1981 from [REDACTED] in El Monte, California.
4. Notarized statements from [REDACTED] and [REDACTED] stating the applicant has resided in the United States since 1981.
5. A notarized statement from [REDACTED], who states that the applicant resided in the United States at [REDACTED] in El Monte, California from February 1982 until July 31, 2001.
6. Notarized statements from [REDACTED] and [REDACTED] stating the applicant has resided in the United States since 1984.
7. Notarized statements from [REDACTED] and [REDACTED] stating the applicant has resided in the United States since 1985.
8. A notarized statement from [REDACTED] who states the applicant has resided in the United States since 1987.
9. Notarized statements from [REDACTED] and [REDACTED] stating the applicant has resided in the United States since 1988.
10. A letter from [REDACTED] Pastor of Our Lady of Guadalupe Church in El Monte, California, who states the applicant has been a parishioner since 1981.

11. A declaration of landlord from [REDACTED] who states that the applicant was his tenant at [REDACTED] El Monte, California, from 1981 to 1984.
12. A declaration of landlord from [REDACTED] who states that the applicant was her tenant at [REDACTED], El Monte, California, from 1984 to 1986.
13. A declaration of landlord from [REDACTED] who states that the applicant was her tenant at [REDACTED] El Monte, California, from 1986 to December 22, 1992.
14. A verification of employment statement from [REDACTED] who states that the applicant was employed as a mechanic's assistant at a business known as Auto Mechanic in La Puente, California, from September 1981 to December 1984.
15. A verification of employment letter from [REDACTED] who states that the applicant worked as a chief worker for [REDACTED] in Huntington Park, California, from 1986 to 1992.
16. A verification of employment letter from [REDACTED] who states the applicant was employed at [REDACTED] from December 9, 1985 through March 3, 1987.
17. A verification of employment letter from [REDACTED] who states the applicant worked as a maintenance worker for [REDACTED], since 1988.
18. A birth certificate for his son [REDACTED] showing that he was born on March 11, 1985 in Mexico.
19. The applicant's State of California driver's license issued April 10, 1986.

The applicant's receipts dated August 13, 1981 from Travelers Express and February 1981 from General Money Order (Item # 1 and # 2 above) do not appear genuine because on his Form I-687, the applicant stated he first resided at [REDACTED] in El Monte, California, in 1999. The applicant's receipt dated January 21, 1981 from [REDACTED] in El Monte, California, (Item # 3) appears to have been altered because it shows in another part of the bill that he paid \$170.00 cash for the repairs on January 22, 1992. Also, the record contains an unaltered copy of the same bill showing the original receipt was dated January 21, 1992.

On his Form I-687, the applicant stated that he resided at [REDACTED] El Monte, California, from January 1981 to 1984, [REDACTED] El Monte, California, from 1984 to 1989 and at [REDACTED] El Monte, California, from 1989 to 1993. These addresses do not agree with the notarized statement from [REDACTED] (Item # 5) or the declaration of landlord statements from [REDACTED] (Items # 11 through # 13). On his Form I-687, the applicant was asked to list any affiliations or associations that he had in the United States such as clubs, organizations, churches unions or businesses. He did not list Our Lady of Guadalupe Church (Item # 10).

On his Form I-687, the applicant does not list [REDACTED] (Item # 17) as an employer. Also, the employment verification letters (Item's 13 through # 17) do not provide the applicant's address at the time of employment. 8 C.F.R. § 245a.2(d)(3)(i).

The record does not explain how the applicant fathered a child in Mexico (Item # 18) when his first visit to Mexico during the requisite period, as indicating on his Form I-687, was on May 10, 1987. Based on the applicant's State of California driver's license (Item # 19) the AAO accepts that the applicant was present in the United States for a part of the requisite period.

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). These inconsistencies cast doubt not only on the evidence containing the conflicts, but on all of the applicant's evidence and all of his assertions.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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 applicant's asserted employment, affiliation and residential histories on his Form I-687 are accompanied by inconsistent evidence.

The evidence must be evaluated not by the quantity of evidence 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. Given the absence 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. Consequently, the director's decision to deny the application is affirmed.

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