

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

L1

FILE:

MSC-06-074-11917

Office: NEW YORK

Date: FEB 05 2009

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:

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, New York. 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 noted that the applicant failed to address the inconsistencies detailed in the Notice of Intent to Deny (NOID). The director further noted that the evidence submitted in response to the NOID was insufficient to demonstrate the applicant's presence in the United States prior to January 1, 1982. The director noted in the NOID that the affidavits submitted by the applicant were neither credible nor amenable to verification, and that there was no proof that the affiants had direct personal knowledge of the events and circumstances of the applicant's residency. The director also noted in the NOID that although the affiants [REDACTED] and [REDACTED] stated that the applicant first entered the United States in the early 1980's, the applicant testified under oath that he entered the United States in July of 1979. The director also questioned the applicant's eligibility for class membership. 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 that the affidavits submitted by the applicant are credible and sufficient to establish the applicant's eligibility for the immigration benefit sought. Counsel also asserts that credible testimony corroborated by affidavits from credible witnesses is sufficient to establish the applicant's eligibility for the immigration benefit sought, and that any doubt should be given in the applicant's favor.

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 United States Citizenship and Immigration Services (USCIS) on December 13, 2005. At part #30 of the Form I-687, the applicant listed his first residence as [REDACTED] in Brooklyn,

New York from 1985 to 1987; and listed at part #32 of the application that his employment in the United States was with Bicor Processing Corporation from 1986 to 1988.

The applicant submitted the following attestations as evidence:

- An affidavit from [REDACTED] in which she stated that she met the applicant when he first arrived in the United States in the early 1980s, and that they have become acquainted and have always stayed in touch with each other.
- An affidavit dated November 30, 2005 from [REDACTED] in which he stated that he has known the applicant for over 20 years and that he met the applicant when he first came to the United States in the early 80s. He further stated that they have become acquainted and have always stayed in touch with each other.

Here, the statements made by the affiants are inconsistent with the statements made by the applicant during his immigration interview where he stated under oath that he first entered the United States in July of 1979. Because the affiant's statements are inconsistent with statements made by the applicant, doubt is cast on assertions made in the affidavits. 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, 591-92 (BIA 1988). In addition, the affiants fail to specify the frequency with which they saw and communicated with the applicant or the whereabouts and circumstances of his residency during the requisite period. The affiants fail to specify under what set of circumstances they met the applicant or the nature of their relationship with the applicant during the requisite period.

In response to the NOID, the applicant submitted photocopies of pages from his passport. He also submitted with his application a copy of his Form I-94 visa which demonstrates his entry into the United States in August of 1985. Although the applicant's passport and Form I-94 are evidence of the applicant's entry into the United States in 1985, they are insufficient to demonstrate his presence in the country prior to January 1, 1982, and throughout the requisite period.

In denying the application the director noted that the evidence submitted was insufficient to overcome the grounds for denial and that the applicant has failed to address the inconsistencies detailed in the NOID.

On appeal, the applicant reasserts his claim of eligibility for temporary resident status.

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 since prior to January 1, 1982,

and throughout the requisite period. He has failed to overcome the director's basis for denial. The applicant has failed to address the inconsistencies raised by the director in the NOID. The attestations submitted are inconsistent with statements made by the applicant under oath, and are also lacking in detail sufficient to support the applicant's claimed eligibility for the immigration benefit sought. It is also noted that on his Form I-687 application, the applicant list his first residence in the United States beginning in 1985 and his first employment beginning in 1986. There is no evidence in the record of proceeding to show where the applicant lived or worked before 1985.

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 evidence that is inconsistent with statements he made, and that is lacking in detail, with 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.