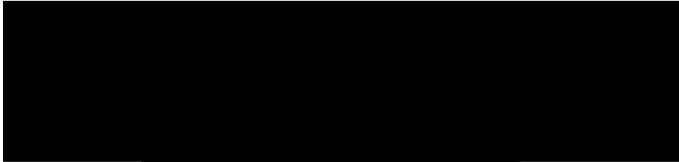


**PUBLIC COPY**

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services



L1

FILE [REDACTED]  
MSC 06 028 10439

Office: LOS ANGELES

Date:

**FEB 26 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:



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.

A handwritten signature in black ink, appearing to read "John F. Grissom".

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 on appeal. The appeal will be dismissed.

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. In so finding, the director noted that the applicant had submitted documentation from [REDACTED] and an employment letter. The director found that none of the writers were able to provide proof of the applicant's residency prior to January 1, 1982, although they stated that they knew the applicant at different times after 1982.

On appeal, counsel asserts that United States Citizenship and Immigration Services was required to issue a Notice of Intent to Deny (NOID) concerning the applicant's CSS class membership prior to issuing the Notice of Denial. Counsel states that taken in its entirety, the record establishes the applicant is eligible for the requested benefit.

According to the settlement agreements, the director shall issue a NOID before denying an application for class membership. Here, the director adjudicated the Form I-687 on the merits and did not deny the application for class membership. Therefore, the director was not required to issue a NOID concerning the issue of class membership prior to making her determination.

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). 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 for Status as a Temporary Resident Under Section 245A of the Immigration and Nationality Act, 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. A letter dated December 4, 2005, from [REDACTED] of the Sierra Vista Congregation of Jehovah’s Witnesses in Ontario, California. He states that the applicant has been associated with the organization since July 20, 1986, and attends the Ontario Kingdom Hall of Jehovah’s Witnesses.
2. A letter dated December 2, 2005, from [REDACTED] who states he has known the applicant since 1983 and that he was his neighbor for several years.
3. A letter dated August 8, 2005, from [REDACTED], owner of [REDACTED] in Chino, California, who states that he has known the applicant for 23 years.
4. A letter dated December 1, 2005, from [REDACTED] owner of [REDACTED] who states that he has known the applicant since 1982 and that he was employed by him as a welder for two years.
5. An employment verification letter, dated October 15, 2005, on the letterhead of [REDACTED], farm labor contractor signed by [REDACTED]. Mr. [REDACTED] states he was a general manager for [REDACTED] from 1975 to 1987, and that the applicant harvested produce for [REDACTED] from January 1982 to April 1986. [REDACTED] stated that the company paid all of its crew members in cash, did not keep records, and ceased operating in September 1987. Mr. [REDACTED] stated that the information he was providing was based solely on his own memory.

The letter from [REDACTED] of the Sierra Vista Congregation of Jehovah’s Witnesses in Ontario, California, (Item # 1 above), only documents the applicant’s residence in the United States since July 20, 1986. The letters from [REDACTED] and [REDACTED]

(Items # 2 and 3), do not indicate that they have known the applicant since before January 1, 1982.

Additionally, the employment verification letter from (Item # 4), does not provide the applicant's exact period of employment, address at the time of employment and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable. 8 C.F.R. § 245a.2(d)(3)(i).

On his Form I-687, he did not state that he worked for , a farm labor contractor. However, the employment verification letter from the former general manager of the firm (Item # 5) states he worked for the company from January 1982 to April 1986. This office questions how a **former** employee of is able to provide employment verification letters on the company letterhead. Additionally, the employment verification letter does not provide the applicant's address at the time of employment and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable. 8 C.F.R. § 245a.2(d)(3)(i).

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 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 asserted employment history on his I-687 is 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 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. Consequently, the director's decision to deny the application is affirmed.

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