

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

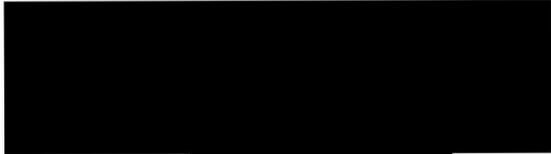
U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Room 3000  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

L1



FILE:

MSC-05-265-13117

Office: NEW YORK

Date: JAN 06 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. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed or rejected, 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.

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 (together comprising the I-687 Application). The director denied the application and, based upon the evidence submitted and the applicant's interview with a United States Citizenship and Immigration Services (USCIS) officer, determined that the applicant had not met the burden of proving by a preponderance of the evidence that he is eligible for the benefit sought.

On appeal, counsel for the applicant states the director arbitrarily denied the application and her decision was not supported by the facts and circumstances in the case. Counsel further asserts that the documentation submitted coupled with the applicant's testimony during the interview is sufficient to sustain the application.

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)(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, "[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 (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.

The issue in this case is whether the applicant has met his burden of proving by a preponderance of the evidence to establish that he is eligible for temporary resident status pursuant to Section 245A of the Act.

The applicant submitted two affidavits to establish eligibility for temporary resident status. Both affiants claim to have known the applicant for 24 years. [REDACTED] additionally states she has maintained contact with the applicant and met him on several occasions. On appeal, counsel claims that the two affidavits together with the applicant's testimony are credible and sufficient as evidence of the applicant's eligibility for temporary resident status and the director was wrong to deny the application. While it is true that an application for temporary resident status cannot be denied solely because an applicant has only submitted affidavits as proof of residence, the submission of affidavits alone will not always be sufficient to support the applicant's claim. The regulations at 8 C.F.R. § 245a.2(d)(6) state the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. Affidavits containing specific, personal knowledge of the applicant's whereabouts during the time period in question should be given greater weight than fill-in-the-blank affidavits providing generic information. Upon review of these affidavits, the AAO finds that neither of the affiants includes sufficient detail to indicate that the relationship probably did exist and the witnesses do, by virtue of their relationship, have knowledge of the facts alleged. The affiants' statements

such as “I have known the applicant since 1981” or “I have met him (the applicant) on several occasions” without other detailed information such as the applicant’s residence during the time addressed in the affidavits or where and when the affiant met the applicant on “several occasions,” are not persuasive as evidence of the applicant’s presence in the United States during the requisite period. Because these affidavits are significantly lacking in relevant detail, they lack probative value and have only minimal weight as evidence of the applicant’s eligibility for temporary resident status.

Without credible documentation to support the applicant’s claim that he is eligible for temporary resident status, his testimony alone in this case is insufficient to overcome the burden of proof. The regulations specifically require an applicant for temporary resident status to provide evidence of eligibility apart from his or her own testimony to meet his or her burden of proof. 8 C.F.R. § 245a.2(d)(6).

The absence of credible and probative documentation to corroborate the applicant’s claim of continuous residence for the entire requisite period and lack of detail noted in the record, seriously detract from the credibility of his 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 lack of credible supporting documentation, it is concluded that the applicant has failed to establish by a preponderance of the evidence that he has continuously resided in an unlawful status in the United States for the requisite period as required 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.