

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

[REDACTED]

FILE:

MSC 05-231-32300

Office: LOS ANGELES

Date:

JAN 06 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.

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 (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 denied the application, finding 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 had indicated on his Form I-687 at part #33 where he was asked to list his employment history that from 1978 to 2001 he had "Various Jobs at Various Locations," but had failed to include the street name or cities where his employment was located. The director also noted that the applicant submitted a copy of his Social Security Statement of Income, but that there was no income listed for the 1983 tax year. The director further noted that the applicant had failed to submit IRS printouts from 1982 to 1988. The director denied the application, finding that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, the applicant asserts that he is unable to recall the places where he worked and lived since his arrival in the United States and has lost a lot of documentation from that period. The applicant also asserts that he was unable to obtain an IRS printout from 1982 to 1988 because he had been informed by the IRS that they would only provide such information for the past 10 years. The applicant states that he was self-employed in 1983 and 1988 and that is why no wages are shown on the Social Security Statement of Income for those years. The applicant resubmits a copy of his Social Security Statement of Income and submits copies of IRS Tax Form 1040 for the 1983 and 1988 tax years.

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 245(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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

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 May 19, 2005. At part #30 the applicant indicated that he resided at [REDACTED] in Paramount from January 1981 to

October 1986; and at [REDACTED] in Paramount from October 1986 to January 1989. At part #33 of his application, where he was asked to list his employment since entering the United States, the applicant stated that he worked at "Various Locations at Various Jobs" from March 1978 to September 2001.

The applicant submitted as evidence:

- Copies of his children's Mexican birth certificates dated January 19, 1984 and January 15, 1987;
- A copy of the applicant's Mexican marriage certificate dated March 18, 1983;
- A copy of the applicant's California Driver License dated October 9, 1986; and,
- A copy of the applicants earning statement from the Social Security Administration which lists earnings for the years 1978, 1979, 1980, 1981, 1982, and 1984.

The applicant's children's birth certificates and his marriage certificate are indicators of his presence in Mexico in 1983, 1984 and 1986 and are irrelevant to establishing his presence in the United States during the requisite period. The applicant's earning statement and California Driver License is evidence of his presence in the United States in 1982, 1984 and 1986, however, it is insufficient to demonstrate his continuous unlawful residence in the country for the duration of the requisite period.

The applicant submitted the following attestations:

- A letter from [REDACTED] in which he stated that the applicant is his brother-in-law and that they shared rent and utility expenses at [REDACTED] in Paramount, California beginning in August of 1988.
- An affidavit from [REDACTED] in which he stated that he has known the applicant since before 1980. He also stated that the applicant approached him in 1983 seeking employment and that the applicant was self-employed, working as a gardener and carpenter. The affiant further stated that the applicant lived with him at [REDACTED] in Paramount, California in 1987 and 1988.
- A letter of employment from [REDACTED] president of [REDACTED] in which he stated that the applicant has been employed by the company since 1978, barring brief periods of leave to care for his elderly parents in Mexico.

The statements made by [REDACTED] and [REDACTED] are inconsistent with the applicant's statement on his Form I-687 application at part #30 where he stated that he resided at [REDACTED] in Paramount from October 1986 to January 1989. 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 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the inconsistencies. The employment letter does not conform to regulatory standards for attestations by employers. Specifically, the letter does not specify the address(es) where the applicant resided throughout the claimed employment period, or the exact dates of employment. 8 C.F.R. § 245a.2(d)(3)(i). Here, the declarant fails to indicate whether the employment information was taken from company records. Neither has the availability of the records for inspection been clarified. 8 C.F.R. § 245a.2(d)(3)(i). The record does not contain copies of personnel records, payroll records or attendance records that pertain to the requisite period to corroborate the assertions made by the declarant.

In denying the application, the director determined that the applicant had failed to submit evidence that was requested and that he failed to specify his places of employment and residence.

On appeal, the applicant reasserts his claim of eligibility for temporary resident status and states that he is unable to remember his addresses or places of employment due to the passage of time. The applicant submits as evidence:

- Copies of his IRS Form 1040 for the 1983 and 1988 tax years; and,
- A copy of his earning statement from the Social Security Administration which lists the applicant's earnings for the years 1978 through 1983, and 1984 through 1987.

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 throughout the requisite period. He has failed to overcome the issues raised by the director, and has also failed to provide a plausible explanation for the inconsistencies in the record. The copies of the IRS 1040 Forms submitted by the applicant for tax years 1983 and 1988 are not signed and are dated May 31, 1991. It is further noted that although the applicant claims that he was informed by the IRS that tax records for the years 1982 to 1988 were not available, he failed to submit documentation to substantiate that claim. It is also noted that the applicant admits to failing to provide specific addresses and places of employment during the requisite period. On appeal, the applicant states that he was self-employed in 1983 and 1988 and that is why no wages were shown on the Social Security Statement of Income for those years. However, in a letter signed and dated December 11, 1992, [REDACTED] president of [REDACTED], stated that the applicant worked for his company "90% of the time for the past 14 years." The attestations submitted by the applicant are inconsistent with statements made by the applicant pertaining to his residency in the United States during the requisite period, and the letter of employment fails to conform to regulatory standards.

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 failure to provide specific information pertaining to his employment and residential histories, and based upon his reliance on evidence with minimal 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.