

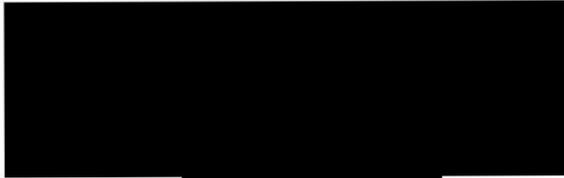
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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services



41

FILE:



Office: LOS ANGELES

Date:

JAN 26 2009

MSC-06-089-11825

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.

A handwritten signature in black ink, appearing to be "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 and 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 Act, and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet. The director denied the application after determining that the applicant had not established by a preponderance of the evidence that he had continuously resided or had been continuously physically present in the United States for the duration of the requisite period. The director noted the inconsistencies in the applicant's testimony and statements and statements made by affiants concerning the applicant's residency and employment during the requisite period. 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 applicant's testimony and statements and the evidence submitted are sufficient to establish his continuous unlawful residence in the United States since before January 1, 1982. The applicant resubmits copies of the affidavits, letter of employment, and tax records on appeal.

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 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).

An alien shall be regarded as having resided continuously in the United States if at the time of filing an application for temporary resident status, no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, through the date the application is filed, unless the alien can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the alien was maintaining residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.15(c)(1).

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 Citizenship and Immigration Services (CIS) on December 28, 2005. The applicant indicated on his Form I-687 application at part # 30 where he was asked to list his places of residence that he resided at \_\_\_\_\_ in Baldwin Park, California from May 1977 to September 1977; at

██████████ in Baldwin Park, California from September 1977 to June 1981; and at ██████████ in Azusa, California from June 1981 to April 1990. The applicant indicated at part #33 of his application that he was employed by ██████████ as a construction worker from March 1972 to 1983; by ██████████ as a maintenance person from 1983 to 1988; and by ██████████ as a field person from September 1987 to November 1987.

During his interview with immigration officers on February 22, 2007, the applicant stated under oath that he entered the United States in May of 1977. The applicant further stated that he lived with his brother ██████████ for 2 or 3 years in ██████████; that he moved in 1980 to live at his brother's ██████████ house for 5 to 6 years; that in 1985 or 1986 he moved with his brother ██████████ and his family across the street, where he remained until 1991.

The applicant submitted a copy of his Social Security Statement issued by the Social Security Administration which listed his annual earnings for the years 1978 through 1982, and 1989 through 1990. Although the applicant indicated on his Form I-687 application at part #33 that he was employed by ██████████ as a construction worker from March 1972 to 1983; by ██████████ as a maintenance person from 1983 to 1988; and by ██████████ as a field person from September 1987 to November 1987, there is no indication on his Social Security Statement of Earnings to show any income earned from 1983 through 1988.

The applicant submitted copies of his Internal Revenue Service (IRS) Form 1040 for the 1979 tax year; letters dated November 6, 1981 and August 25, 1982 from the IRS addressing the applicant's 1979 tax return. The applicant submitted copies of the first page from his IRS Form 1040 tax return for 1981 and a letter dated July 5, 1990 from the IRS concerning the applicant balance due for the tax period December 31, 1981. Although the documents serve as some evidence of the applicant's presence in the United States in 1979, 1981, and 1982, they are insufficient to demonstrate his continuous unlawful residence throughout the requisite period.

The applicant submitted the following affidavits as evidence:

- **A letter from ██████████** in which he stated that he employed the applicant as a maintenance worker on his buses from 1983 to 1988 and that the applicant was paid in cash. This statement is inconsistent with statements made by the applicant, under oath, during his interview with immigration officers on February 22, 2007. During his interview, the applicant stated that he worked in a factory that made airplane parts from 1980 to about 1985; that in 1985 he worked for a small factory as an assembler; and that in 1988 he worked for a tire company. In addition, the letter of employment 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 specific dates of employment. 8 C.F.R. § 245a.2(d)(3)(i). 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). Because the declaration is inconsistent with statements made by the applicant, and because it fails to conform to regulatory standards, it can be accorded little weight in establishing that the applicant resided in the United States during the requisite period.

- An affidavit from [REDACTED] in which she stated that she met the applicant in 1980 when he came to her husband looking for a job. The affiant further stated that her family gave the applicant a place to live for 3 years and that during that period she resided in the city of Monrovia. She also stated that they continue to visit and communicate with each other. Here, the affiant's statement is inconsistent with statements made by the applicant in his Form I-687 application and his statement made under oath during his interview with immigration officers. The applicant did not indicate that he ever lived in the city of Monrovia. In addition, the applicant stated that he lived with his brothers, not the affiant during the period in question.
- An affidavit from [REDACTED] in which he stated that he met the applicant in 1980 at [REDACTED] where the applicant came looking for a job, and was subsequently hired. The affiant further stated that the applicant lived with he and his wife for 3 years and that they continue to visit with each other. Here, the affiant's statement is inconsistent with the applicant's statements in his Form I-687 application and his statement made under oath during his interview with immigration officers. The record shows that the applicant indicated that he was employed by [REDACTED] from June 1989 to June 1990. It is noted that the applicant indicated during his interview that he was employed by a manufacturer of airplane parts during the 1980s; and on his Form I-687 application he indicated that he was employed by [REDACTED] as a construction worker.
- Affidavits from [REDACTED] and [REDACTED] in which they stated that they have known the applicant since 1978 and 1980, respectively. They stated that the applicant played soccer every Sunday with [REDACTED] as team members; that the applicant married [REDACTED] sister-in-law; and that they have become good friends, seeing each other during holidays and at other events. Here, the affiants fail to indicate any first-hand knowledge of the applicant's entry into the United States or his whereabouts and the circumstances of his residency during the requisite period.
- An affidavit from [REDACTED] in which he stated that he and the applicant are brothers and that the applicant came to live with him in [REDACTED] in 1978. The affiant further stated that he and the applicant maintained a close relationship from 1978 to 1984. He also stated that he and the applicant visit each other and gather for family reunions and during special events. Here, the affiant fails to specify where the applicant resided or the length of his stay with the affiant. The statement is inconsistent with what the applicant stated on his Form I-687 application and what he stated during his immigration interview. On the applicant's Form I-687 application at part # 30 he stated that he resided at [REDACTED] in Baldwin Park, California from September 1977 to June 1981. During

his immigration interview, the applicant stated that he resided with his brother [REDACTED] in 1980, for 2 to 3 years.

In denying the application the director noted the discrepancies in the evidence submitted by the applicant and the inconsistencies in statements he made during his immigration interview and on his Form I-687.

On appeal, counsel reasserts the applicant's claim of eligibility for temporary residence status. The applicant does not submit any new evidence.

In the instant case, the applicant has failed to provide sufficient, 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 issues raised by the director. There is insufficient evidence in the record of proceeding to demonstrate the reliability of the attestations submitted. The applicant has failed to provide an explanation for the numerous inconsistencies found in the record of proceeding relating to his residency and employment history. 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 affiant's statements are inconsistent with statements made by the applicant and are lacking in detail. The applicant's Social Security Statement of Earnings does not show any earnings for the tax years 1983 through 1988 to support the applicant's claimed residence. Although the tax documents demonstrate evidence of the applicant's presence in the United States in 1979, 1981, and 1982, they are insufficient to demonstrate his continuous unlawful residence in the United States throughout the requisite period.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, and the inconsistencies in the evidence discussed above 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 inconsistent statements, his reliance upon documents that do not conform to regulatory standards, and because other affidavits are inconsistent with statements he made and are lacking in 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.'