

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

**PUBLIC COPY**



U.S. Citizenship  
and Immigration  
Services

L-1



FILE: [REDACTED]  
MSC-05-236-10343

Office: DALLAS

Date: **JAN 29 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:

SELF-REPRESENTED

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 "J. 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 District Director, Dallas, Texas. 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.

On appeal, the applicant submits additional documentary evidence. The entire record was reviewed and considered in rendering a decision on the 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 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. 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 periods, 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, 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).

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 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. See 8 C.F.R. § 245a.2(d)(6). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

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 or petitioner 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 proceeding is whether the applicant (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. The documentation that the applicant submits in support of his claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of several affidavits, a photograph, a hospital identification card, and the applicant's birth certificate. Some of the evidence submitted indicates that the applicant resided in the United States after May 4, 1988; however, because evidence of residence after May 4, 1988 is not probative of residence during the requisite time period, it shall not be discussed. The AAO has reviewed each document in its entirety to determine the applicant's eligibility; however, the AAO will not quote each witness statement in this decision.

The record contains a form-letter affidavit from [REDACTED] stating that he has known the applicant since September 23, 1983 and an affidavit from [REDACTED] stating that the applicant resided with him from February 23, 1983 to December 31, 1991. Although the affiants state that they have known the applicant since 1983, the affidavits do not supply enough details

to lend credibility to an at least 25-year relationship with the applicant. For instance, the affiants do not indicate how they dated their initial meeting with the applicant, how frequently they had contact with the applicant, or how they had personal knowledge of the applicant's presence in the United States. Furthermore, the affiants do not provide information regarding where the applicant lived or was employed during the requisite period. Given these deficiencies, these affidavits have minimal probative value.

As evidence of the applicant's employment during the requisite period, he submitted: an affidavit from [REDACTED] of [REDACTED] showing his employment with this company from July 3, 1987 to August 9, 1989; and an affidavit from [REDACTED] of [REDACTED] showing his employment with this company from January 4, 1984 to May 8, 1986. The regulation at 8 C.F.R. § 245a.2(d)(3)(i) provides requirements for letters from employers. Such letters must include (A) Alien's address at the time of employment; (B) Exact period of employment; (C) Periods of layoff; (D) Duties with the company; (E) Whether or not the information was taken from official company records; and (F) Where such records are located and whether the Service may have access to the records.

Neither of these statements fully complies with the above cited regulation because they do not provide the applicant's address(es) at the time of employment and indicate whether the information regarding his employment was taken from official company records. Notably, neither of these statements indicates how the authors dated the applicant's employment. Furthermore, neither of the statements provides the location of where the applicant was employed to verify that he was employed in the United States. Moreover, the applicant failed to show his employment with [REDACTED] on his Form I-687 application, casting doubt upon the credibility of his purported employment with this company. Given these deficiencies, these affidavits have minimal probative value.

The applicant furnished a color copy of a photograph of three individuals (one man and two women) sitting on a sofa. The applicant indicated with a handwritten notation that this photograph was taken in September 1986. However, the applicant failed to provide any information on how he dated this photograph. There is no indication that the photograph was date stamped at the time it was taken or developed. Furthermore, the applicant failed to identify himself as one of the individuals in the photograph. Given these deficiencies, this photograph is without any probative value.

The applicant furnished a faint copy of a hospital identification card from the Dallas County Hospital District. The applicant indicated with a handwritten notation that this card is from November 1986; however the only legible date on this card is an expiration date of January 15, 1988. Furthermore, the applicant's name is not imprinted on the card; it appears to have been issued for [REDACTED]. Given these deficiencies, this photograph is without any probative value.

The final evidence in the record consists of two of the applicant's affidavit questionnaires he completed to establish his eligibility for class membership in *CSS v. Meese* and the corresponding Form I-687 applications he filed with these questionnaires. The applicant showed on each of these documents that his first entry into the United States was not until after the requisite period. The documents reflect that the applicant first entered the United States on either September 1983 or September 1982.<sup>1</sup> The record further reflects that on April 7, 1994, the applicant was interviewed in connection with his application for CSS class membership. During this interview, the applicant testified in a sworn written statement that he first entered the United States on September 23, 1983. The inconsistencies between the applicant's prior Form I-687 applications and his current Form I-687 application undermine his credibility as well as the credibility of his claims that he entered the United States prior to January 1, 1982 and resided in the United States for the entire requisite period. Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that he is eligible for the benefit sought.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and 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.

---

<sup>1</sup> This date was later amended during the applicant's interview for CSS class membership to reflect a date of September 1983.