

identifying data deleted to
prevent clearly unwarranted
invasion of personal **privacy**

U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



LI

FILE: [REDACTED]
MSC 05 265 12248

Office: CHICAGO

Date: JUN 02 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 if your case was remanded for further action, you will be contacted.

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, Chicago. 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 for temporary residence because the applicant could not supply credible evidence of his unlawful residence in the United States for the requisite period of time. The director concluded that the applicant had not resided continuously in the United States for the requisite period and was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

The applicant is represented by counsel on appeal. Counsel argues that the applicant is eligible for temporary resident status pursuant to the settlement agreements because he has provided credible evidence of entry and residence for the requisite period.

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)(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).

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 proceeding is whether the applicant has furnished sufficient credible evidence to meet his burden of establishing continuous unlawful residence in the United States for the duration of the requisite period, and that he is otherwise admissible to the United States. Here, the applicant has failed to meet this burden.

The AAO has reviewed all of the documents in the file in their entirety regarding the issue of the applicant's entry and residence in the United States for the requisite period. The applicant's proof of entry and residence includes photocopies of an apartment lease for the period of October 4, 1989 to September 30, 1990, a federal tax return for 1989, utility bills for 1989 and 1990, and other receipts for 1989 and 1990. The applicant submitted no documentation to establish entry or residence on or before January 1, 1982, such as rental receipts, utility bills, tax returns, bank statements, lease agreements, or any other document that would support his assertion of eligibility. For example, the applicant states on the Form I-687 that he resided at [REDACTED] from October, 1981 to July, 1987. However, the applicant did not submit any credible, verifiable documents to establish his residence at that address for that period of time.

The applicant also submitted an affidavit dated January 4, 2006 from [REDACTED] Mr. [REDACTED] states therein that he has known the applicant since 1982. However, this affidavit fails

to establish that the applicant entered on or before January 1, 1982. The statement does not provide concrete information, specific to the applicant and generated by the asserted associations with him, which would reflect and corroborate the extent of those associations and demonstrate that they were a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the affidavit. To be considered probative and credible, witness affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Upon review, the AAO finds that the affidavit submitted by the applicant does not indicate that the assertions are probably true. Therefore, it has little probative value.

The applicant also submitted a statement from [REDACTED] dated December 6, 2001. Mr. [REDACTED] states therein that he employs the applicant as an assistant manager at [REDACTED] located at [REDACTED]. The statement does not list any dates of employment, nor does it comply with the regulatory requirements for employment verification listed at 8 C.F.R. § 245a.2(d)(3)(i). Furthermore, this employment is not listed on the applicant's Form I-687. As such, it carries minimal probative weight.

As noted above, 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). The applicant has failed to meet this burden of proof regarding his entry and residence in the United States for the requisite period, and his application for permanent resident status pursuant to the LIFE Act must be denied on those grounds.

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.