

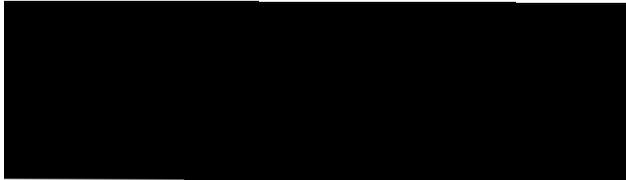
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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Services

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FILE: [REDACTED]
MSC-05-298-10640

Office: NEWARK

Date:

JUN 25 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. 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, Newark. 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, finding that the applicant failed to submit credible evidence to establish his continuous residence in the United States since before January 1, 1982.

On appeal, the applicant asserts that he has provided sufficient credible affidavits to support his claim and application for temporary resident status.

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 sole issue in this proceeding is whether the applicant has furnished sufficient credible evidence to meet his burden of proving by a preponderance of the evidence that he has resided in the United States continuously since before January 1, 1982 through the date he filed or attempted to file the application for temporary resident status.

The applicant claims that he has resided in the United States continuously since August 1981. As evidence, he provided five affidavits from his friends and two letters from his past and current employers. Additionally, the applicant, in response to the director's request for more evidence, submitted his most recent social security earnings statement.

The two letters from the applicant's employers do not pertain to the requisite period and will not be considered. The earnings statement from the Social Security Administration is not probative as evidence of the applicant's residence in the United States since it shows income earned from 1990, after the requisite period.

All five affiants generally declare that they have personal knowledge of the applicant's continuous residence in the United States since 1981. Some list the address where the applicant has been residing in the United States since 1981. One affiant claims to have resided together with the applicant in Lakewood, California from September 1983 to 1987. None, however, provides concrete information about the applicant's residence or life in the United States during the requisite period. None describes with sufficient detail the events and circumstances of how he or she first met the applicant in the United States, how he or she dates his or her meeting or acquaintance with the applicant in 1981, or whether he or she has personal knowledge of where

the applicant resided during the requisite period. 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. Simply listing the address at which the applicant lived during the requisite period without providing any detail about the events and circumstances of the applicant's life in the United States during the requisite period does not establish the reliability of the assertions and does not show his continuous residence in the United States throughout the requisite period. None of the affidavits submitted establishes that the applicant resided continuously in the United States throughout the requisite period.

On appeal, the applicant claims that he has provided sufficient credible affidavits to meet his burden of proving by a preponderance of the evidence that he has resided continuously in the United States since August 1981; each affiant has provided his or her contact information including his or her telephone number and each has expressed his or her willingness to testify for the applicant. However, the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. Here, none of the affidavits contains detailed information about the applicant's residence and life in the United States during the requisite period. The AAO agrees with the director that, considered individually and together, the affidavits submitted do not establish that the applicant has resided in the United States continuously since before January 1, 1982 and throughout the requisite period.

The lack of detail in the affidavits and the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period 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.