

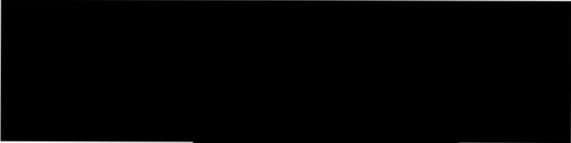
**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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



PUBLIC COPY

LI



FILE: [REDACTED] Office: BALTIMORE
MSC-06-101-15094

Date: **MAR 16 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 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 District Director, Baltimore. 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. Specifically, the director found material inconsistencies in the applicant's testimony and documentary evidence.

On appeal, the applicant, through counsel, addresses the basis for the director's denial. Counsel contends that the director abused his discretion in denying the application despite evidence regarding the applicant's claim of being present in the United States during the requisite period. The AAO has reviewed all of the evidence and has made a *de novo* decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.¹

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.

¹ The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n.9 (2d Cir. 1989).

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.

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 two statements of relationship from [REDACTED] and a flyer from the Calvary Baptist Church. The AAO has reviewed these documents in their entirety to determine the applicant’s eligibility.

The statements of relationship from [REDACTED] consist of a fill-in-the-blank form affidavit and a declaration, both dated April 7, 2006. The form affidavit provides that she has personal knowledge of the applicant’s residence in the United States since May 1981. It states that the applicant lived with her and her mother from 1981 to 1988. The declaration provides that she has known the

applicant since August 1981. It states that the applicant resided with her at [REDACTED] Brooklyn, New York from August 1981 to December 1988. Although the [REDACTED]'s witness statements provide that she has known the applicant since before January 1, 1982, her statements do not supply enough details to lend credibility to an at least 27-year relationship with the applicant. For instance, she has not indicated how she first met the applicant, and has failed to detail her living arrangement/agreement with the applicant. Further, she does not provide any information regarding where the applicant was employed 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. Upon review, the AAO finds that, individually and together, [REDACTED] witness statements do not indicate that their assertions are probably true. Therefore, they have little probative value.

Moreover, [REDACTED] claim that the applicant resided with her at [REDACTED] Brooklyn, New York is inconsistent with the applicant's temporary resident status application, which provides that he resided at [REDACTED], New York, New York from December 1981 to December 1988. This contradiction is material to the applicant's claim in that it has a direct bearing on the applicant's residence in the United States during the requisite period. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Id.* During the applicant's interview for temporary resident status, he testified in a sworn statement that from 1980 to 1988 he resided most of the time at [REDACTED], but also used an address with a Sri Lankan family on [REDACTED] in Manhattan. The AAO finds that the applicant's explanation fails to resolve the inconsistency in the record because it does not explain the reason he omitted his primary residence at [REDACTED] from his application.

The flyer from Calvary Baptist Church, located at [REDACTED], New York, New York, bears the date May 8, 1983. Notably, the applicant failed to provide his association with this church on his application. Moreover, there is nothing on the church flyer that would serve to link it to the applicant. Therefore, it is without any probative value in this proceeding.

The AAO also notes that the applicant omitted his employment during the requisite period from his application. Part #33 of the application requests applicants to provide their employment history in the United States dating back to January 1, 1982. The applicant responded to this part of the application with his employment from December 2000 until the present. The record reflects that during the applicant's sworn testimony, he stated that he was employed with [REDACTED]. However, he failed to provide any evidence of this employment, or explain the reason for its omission from his application. The applicant's failure to provide this information casts further doubt upon his claim of residence in the United States during the 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). As stated previously, it is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. *Id.* The applicant failed to furnish any other documentary evidence of employment or residence with his appeal.

Based upon the foregoing *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. 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.