

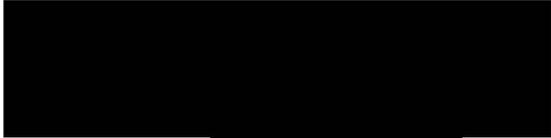
**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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



**U.S. Citizenship
and Immigration
Services**

DUPLICATE COPY?



L1

FILE: [REDACTED]
MSC 06 061 12223

Office: CHICAGO

Date:

NOV 03 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.

Perry Rhew
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. The director determined 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, and that the evidence submitted by him did not establish his eligibility for the immigration benefit sought. 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. Specifically, the director noted that the statements and receipts submitted by the applicant in support of his claim did not establish his continuous residence in the United States for the duration of the requisite period.

On appeal, counsel submits a brief stating that the applicant has established his eligibility for the immigration benefit sought. The applicant also asserts that the director erred by failing to notify the applicant of his right to seek the appointment of a Special Master on appeal. Under the CSS/Newman Settlement Agreements, if the director finds that an applicant is ineligible for class membership, the director must first issue a notice of intent to deny, which explains any perceived deficiency in the applicant's Class Member Application and provide the applicant 30 days to submit additional written evidence or information to remedy the perceived deficiency. Once the applicant has had an opportunity to respond to any such notice, if the applicant has not overcome the director's finding then the director must issue a written decision to deny an application for class membership to the applicant, with a copy to class counsel. The notice shall explain the reason for the denial of the application, and notify the applicant of his or her right to seek review of such denial by a Special Master. *See* CSS Settlement Agreement paragraph 8 at page 5; Newman Settlement Agreement paragraph 8 at page 7. In this instance, however, the director did not find that the applicant was ineligible for class membership, but denied the claim on its merits after considering all evidence of record. The case is not, therefore, subject to review by a Special Master.

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.

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 record contains the following evidence which is material to the applicant's claim:

- The applicant submitted an affidavit form [REDACTED] wherein the affiant stated that he has known the applicant since “before December 31, 1981 in Chicago IL.”

As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. The affidavit provided does not provide detailed evidence establishing how the affiant knew the applicant, the details of their association or relationship, or detailed accounts of an ongoing association establishing a relationship under which the affiant could be reasonably expected to have personal knowledge of the applicant’s residence, activities and whereabouts during the requisite period covered by the applicant’s Form I-687. To be considered probative, 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. The affidavit must contain sufficient detail, generated by the asserted contact with the applicant, to establish that a relationship does in fact exist, how the relationship was established and sustained, and that the affiant does, by virtue of that relationship, have knowledge of the facts asserted. The affidavit submitted by the applicant, therefore, is not deemed probative and is of little evidentiary value.

- The applicant submitted a copy of a U.S. Postal Service receipt for the purchase of stamps. The receipt is dated October 5, 1983, but does not reference the applicant by name or address. The receipt, therefore, is of little evidentiary value.

The applicant submitted a copy of a receipt from Casey’s Standard Service Station which is dated April 5, 1983. The receipt does not, however, reference the applicant by name or address. The receipt, therefore, is of little evidentiary value.

- The applicant submitted a copy of a receipt dated September 5, 1983 from an unnamed service provider for the purchase of automobile parts. In the space provided for the customer’s name, the name [REDACTED] is handwritten. The receipt does not provide the customer’s address in the space provided for that information. The receipt is not verifiable and does not establish that the receipt was issued to the applicant. The receipt is, therefore, of little evidentiary value.
- The applicant submitted a statement signed by [REDACTED] of India Mission Telugu Methodist Church, wherein [REDACTED] stated that he has known the applicant since 1982. [REDACTED] states that the applicant attended Thanksgiving services at his church in 1982, and later joined the church in 1988. [REDACTED] does not state that the applicant has continuously resided in the United States for the duration of the requisite period. The statement is, therefore, of little evidentiary value.

Further, the regulation at 8 C.F.R. § 245a.2(d)(3)(v) provides requirements for attestations made on behalf of an applicant by churches, unions, or other organizations. Attestations must: (1) Identify applicant by name; (2) be signed by an official (whose title is shown); (3) show inclusive dates of membership; (4) state the address where applicant resided during membership period; (5) include the seal of the organization impressed on the letter or the letterhead of the organization, if the

organization has letterhead stationery; (6) establish how the author knows the applicant; and (7) establish the origin of the information being attested to.

The letter presented by the applicant does not comply with the above cited regulation because it does not: state the address(es) where the applicant resided during his membership period; establish in detail that the author knows the applicant and has personal knowledge of the applicant's whereabouts during the requisite period; establish the origin of the information being attested to; and indicate that membership records were referenced or otherwise specifically state the origin of the information being attested to. For this additional reason, the letter is of little probative value.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts 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 applicant's reliance upon documents with minimal probative value, it is concluded that the evidence submitted fails to establish continuous residence in an unlawful status in the United States during the requisite period.

Therefore, based upon the foregoing, 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.