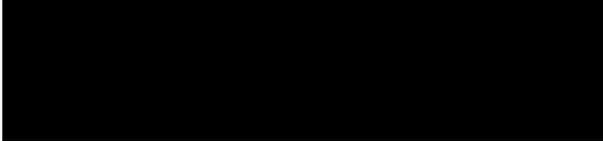




U.S. Citizenship  
and Immigration  
Services

Identifying information is redacted to  
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invasion of personal privacy

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FILE: [REDACTED] Office: LAS VEGAS  
MSC-06 101 21634

**OCT 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: 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.

Perry J. 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 in Las Vegas, Nevada. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a native of Guatemala who claims to have lived in the United States since 1981, 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 on January 9, 2006. 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 asserts that he has submitted sufficient credible evidence to establish he meets the continuous residence requirement for the requisite period. The applicant submitted additional documentation with 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 AAO finds that the applicant has failed to meet his burden.

The record reflects that while the applicant claims to have resided in the United States since 1981, other documents in the record indicate otherwise. The applicant did not submit any objective evidence or document to establish his alleged entry into the United States in 1981. The record reflects a copy of a Notice to Appear (NTA) issued and served on the applicant by a Border Patrol Officer on May 7, 1997, indicating that the applicant entered the United States without inspection in August 1985. The applicant did not dispute the allegations on the NTA, therefore, the applicant's claim of entry and residence in the United States from 1981 is not credible.

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice without competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See id.*

The documentation that the applicant submits in support of his claim to have arrived in the United States before January 1, 1982 and lived in an unlawful status during the requisite period consists of the following:

- Copies of W-2 Wage and Tax Statements from Cal Tec Maintenance Inc. in Los Angeles, California, for the years 1981, 1982, and 1984 through 1988.
- Copies of the first page of Form 1040A U.S. Individual Income Tax Returns for the years 1981, 1982, 1984-1988; and copies of the first page of Forms 540A California Resident Personal Income Tax for the years 1984, 1985, and 1988.
- Copies of service receipts from City of Los Angeles Department of Water and Power for [REDACTED], for March 1982, September 1983, May 1984, and October 1986.
- Copies of service receipts from Southern California Gas Company, with the applicant's name at [REDACTED] for April 1987, March 1988, and October 1989.
- Copies of service receipts from Continental Cablevision addressed to [REDACTED] for May 1986, September 1987, December 1988, and May 1989.

The AAO has reviewed each document in its entirety to determine the applicant's eligibility.

The copies of the Wage and Tax Statements, U.S. Individual Income Tax Returns and California Resident Personal Income Tax submitted by the applicant do not appear to be genuine. The wage and tax statements were issued by Cal Tec Maintenance Inc., Los Angeles, California, however; the applicant did not indicate Cal Tech Maintenance Inc. as any of his employers in the United States during the requisite period. Conversely, the applicant indicated his employers as – Hi Fi Production Inc., Los Angeles, California, from July 1981 to December 1986 and Winston Tires, Los Angeles, California, from February 1987 to January 1992. The applicant submitted only the first pages of the tax returns and not the complete forms. Finally, the applicant did not supplement the wage and tax statements and the tax returns with statements from the Internal Revenue Service and/or the Social Security Administrations to prove that the applicant actually filed the returns during the years indicated and the amount contributed by the applicant to the Social Security Administrations. For the reasons discussed above, the copies of the wage and tax

statements as well as the income tax returns have little probative value as credible evidence of the applicant's continuous residence in the United States during the requisite period.

The service receipts from City of Los Angeles Department of Water and Power as well as the receipts from Continental Cablevision do not bear the applicant's name and therefore cannot be attributed specifically to the applicant. The receipts from Southern California Gas Company showing the applicant's name, appear to have been altered with the applicant's name and address inserted at a later time. The applicant did not submit any credible evidence that he resided at that address during the periods indicated on the receipts.

At his interview on November 21, 2006, the applicant indicated that the [REDACTED] was his sister's address, therefore it is not believable that the applicant, who was 15 years in 1981 when he allegedly entered the United States would have been responsible for the utility bills for the apartment. As previously indicated, doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See Matter of Ho, id.* For the reasons discussed above, the various receipts in the record have little probative value as credible evidence of the applicant's continuous residence in the United States during the requisite period.

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.

For all the reasons discussed above, the AAO concludes that 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.

The AAO notes that the applicant has been arrested four times by the Norwalk Sheriff's office and the Metro Police Department in Las Vegas, Nevada, and charged with multiple counts of Unlawful Possession of a Controlled Substance and Driving Under the Influence during the period 1991 to 1997. The actual court records are not currently contained in the file and the applicant's criminal history will not be used as a basis for dismissing his appeal. However, United States Citizenship and Immigration Services (USCIS) will review the applicant's extensive criminal history in any future application by the applicant to determine eligibility for the benefit sought.

**ORDER:** The appeal is dismissed. This decision constitutes a final notice of ineligibility.