

identifying information deleted to  
prevent clearly unwarranted  
invasion of personal privacy

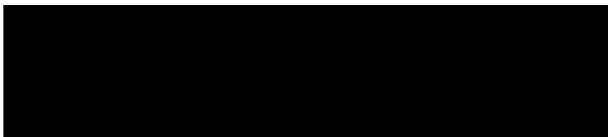
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

L1



FILE: [REDACTED]  
MSC 05 194 33404

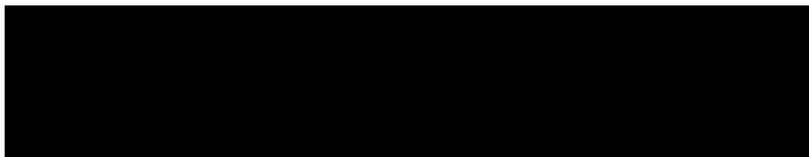
Office: HOUSTON

Date: FEB 23 2010

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.

*Elizabeth McCormack*

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, Houston. 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 provided credible evidence to establish that he had entered the United States prior to January 1, 1982.

On appeal, counsel states that the applicant's testimony and supporting evidence are sufficient to meet the preponderance of evidence standard to establish eligibility under section 245A of the Act. The applicant requested a copy of the record of proceedings under the Freedom of Information Act (FOIA). The record reflects that the FOIA request was processed on May 21, 2009 (NRC2008011073).

On the Form I-694, counsel indicated that a written brief would be submitted within 30 days. To date, this office has no record that any further evidence or brief was received with regard to this appeal. Accordingly, a decision will be rendered based on the evidence of record.

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.

At issue in this proceeding is whether the applicant submitted sufficient credible evidence to meet his burden of establishing that he (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 1, 1982 and lived in an unlawful status during the requisite period consists of affidavits written by friends and other evidence. The AAO will consider all of the evidence relevant to the requisite period to determine the applicant’s eligibility; however, the AAO will not quote each witness statement in this decision.

The applicant claimed on his Form I-687 application, his class determination form and in his declaration that he first entered the United States through Laredo, Texas, without inspection in May, 1981. Form G-325 filed in conjunction with his Form I-485 LIFE application signed by the applicant and dated August 21, 2001 revealed that the applicant resided in [REDACTED] from April, 1966, to May, 1981. However, Form G-325A filed in conjunction with his Form I-130 application signed by the applicant and dated April 25, 1989 states that he resided in [REDACTED] from April, 1966 to February, 1982.

The inconsistencies regarding the date the applicant entered the United States is material to the applicant's claim in that they have a direct bearing on the applicant's continuous residence in the United States during the requisite period. No evidence of record resolves these inconsistencies. 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 unless the petitioner submits competent objective evidence pointing to where the truth lies. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The applicant submitted an affidavit from [REDACTED] attesting to his inability to file an amnesty application. The applicant also submitted affidavits from [REDACTED] and [REDACTED] to establish his initial entry and residence in the United States during the requisite period. The affiants all attest to personally knowing and being acquainted with the applicant since the 1980s. [REDACTED] and [REDACTED] attest to the applicant's absence from the United States in June, 1987, for two weeks and from December 20, 1987 to January 10, 1988, respectively. The affiants attest to the applicant's good moral character and being friends with the applicant but provide no other information about the applicant.

In totality, the affidavits contained in the record do not include sufficient detailed information about the claimed relationship and the applicant's continuous residency in the United States throughout the requisite period. For instance, none of the witness supplies any details about the applicant's life, such as, knowledge about his family members, education, hobbies, employment or other particulars about his life in the United States. The affiants fail to indicate any other details that would lend credence to the claimed acquaintance with the applicant and the applicant's residence in the United States during the requisite period.

The affidavits do not provide concrete information, specific to the applicant and generated by the asserted association with him, which would reflect and corroborate the extent of this association and demonstrate that the affiants had a sufficient basis for reliable knowledge about the applicant during the time addressed in their affidavits. 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. Therefore, the affidavits have little probative value.

The letter signed by [REDACTED] states that the applicant was employed as a construction laborer from March, 1982, until August, 1982. However, the applicant claims on his Form I-687 that he worked for [REDACTED] as a dishwasher from March, 1982 to December, 1985. [REDACTED] of [REDACTED] states in her letter that the applicant was employed from September 4, 1982 until December 13, 1985. [REDACTED] and kitchen manager of [REDACTED]

states that he met the applicant in October, 1986, and that the applicant was employed part-time and resided with his wife at [REDACTED]. The applicant claims on his initial and current Form I-687 that he worked for [REDACTED] in Houston, Texas, as a laborer from December, 1985 until November, 1986 and resided at [REDACTED]. On the initial Form I-687, the applicant claimed that he resided at [REDACTED]. No evidence of record resolves these inconsistencies. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. *Matter of Ho, supra*. The employers do not provide any other information about the applicant or any evidence to verify the applicant's employment. The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and, identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable. As the letters do not meet most of the requirements stipulated in the aforementioned regulation, they will be given nominal weight.

The remaining evidence consists of copies of envelopes, one receipt, earning statements, 1987 W-2 Wage and Earning statements. Two earning statements from [REDACTED] are dated April 28<sup>th</sup> and May 26, 1982, bear the applicant's name and the company name is printed at the top. The other earning statements do not bear the applicant's name and [REDACTED] is printed at the bottom. Three of the paychecks were issued before the start date of the applicant's employment on September 4, 1982.<sup>1</sup> This inconsistency calls into question the authenticity of the [REDACTED] documentation. The 1987 W-2 Wage and Tax Statement listed the employer as [REDACTED], which the applicant has not claimed as an employer on his Form I-687 applications. The 1987 W-2 statement listing [REDACTED] Humble, Texas, as the employer has the applicant residing in Houston, Texas. The applicant's initial Form I-687 lists his address as [REDACTED] from November, 1986 to December, 1988. The applicant has not provided evidence to show how he was employed by a company in Texas and reside in New York at the same time. The inconsistencies in the evidence regarding the applicant's employment lessen the probative value of the earnings records as evidence of the applicant's continuous residence in the United States.

The applicant also submitted copies of three envelopes. However, the probative value of the envelopes is limited because the postmarks are not legible.

An applicant applying for adjustment of status under this part has the burden of proving by a preponderance of evidence that he or she is eligible for adjustment of status under section 245a of the Act. 8 C.F.R. § 245a.2(d)(5). In the instant case, the applicant has failed to submit sufficient evidence to overcome the director's denial. The insufficiency of the evidence and the noted inconsistencies call into question the credibility of the applicant's claim to have entered the United States illegally in May, 1981 and his continuous unlawful residence in the United States throughout

---

<sup>1</sup> As noted above, [REDACTED] of the [REDACTED] stated that the applicant commenced work there on September 4, 1982.

the requisite period. The evidence submitted is insufficient to establish the applicant's 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 requisite period.

The director also determined that the applicant attempted on two occasions to gain a visa by fraudulent means, and therefore, was inadmissible to the United States. This issue will not be further addressed in this proceeding.

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.

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