

**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**

PUBLIC COPY

L1



FILE: [Redacted]
MSC 06 096 13649

Office: JACKSONVILLE

Date: **JAN 27 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.

A handwritten signature in black ink, appearing to read "Perry J. Rhew".

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 Jacksonville, Florida. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a native of England who claims to have lived in the United States since before January 1, 1982, 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 4, 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 counsel asserts that the applicant has submitted sufficient credible evidence to establish he meets the continuous unlawful residence requirement for the requisite period. Counsel submits 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. Here, the applicant has failed to meet his burden.

The record reflects that although the applicant claims that he entered the United States before January 1, 1982 and resided continuously in the country in an unlawful status, other documents in file show otherwise. On an affidavit the applicant swore to on December 22, 2005, the applicant attested that he first entered the United States in 1979 and resided continuously since then, except for few brief absences from the United States – returning each time within a month. A copy of the applicant's passport in the file shows that the applicant was issued a multiple entry visa at the American Embassy in London on April 20, 1979, for an indefinite period. The applicant entered the

United States through New York City on September 4, 1979. The record reflects that the applicant made numerous entries into the United States during the 1980s.

On the Form I-687 the applicant filed in 2006, the applicant indicated that he made numerous trips from the United States to England during the 1980s, and returned to the United States with a valid visa. Based on the applicant's statements, his entries and exits from the United States during the 1980s were made with legal authorization, thus, the applicant has failed to establish by a preponderance of the evidence that he resided in the United States in an unlawful status.

Notwithstanding, the applicant submitted documents into the record that call into question the veracity of his claim that he entered the United States before January 1, 1982 and resided continuously in the country through the requisite period.

The applicant claims that he entered the United States in 1979, and resided continuously in the country thereafter, yet on the affidavit for determination of class membership in League of United Latin American Citizens vs. Immigration and Naturalization Service (LULAC), the applicant stated that he entered the United States for the first time in August 1981. On the Form I-687 the applicant completed on September 8, 1993 and the current Form I-687 he filed in 2006, the applicant provided his addresses in the United States from August 1981, and his employment information from 1982.

A copy of his passport in the record shows that his two children were added to his passport in London on April 23, 1982. The applicant indicated on the Form I-687 he filed in 2006, that his first trip outside the United States was in September 1984. The failure of the applicant to provide for his address in the United States from 1979 to 1981, his employment information from 1979 to 1982, and the notation on his passport on April 23, 1982, strongly suggest that the applicant did not reside in the United States from before January 1, 1982, as he had claimed.

The record includes a copy of a letter from [REDACTED] dated April 9, 1985, addressed to the applicant at his address in Essex, England. The applicant indicated his address on the Form I-687 as [REDACTED] from August 1981 to August 1985. It is abundantly clear from the record that the applicant has submitted conflicting statements and documentation in support of his application. Thus, the applicant has failed to establish that he meets the continuous unlawful residence requirement from before January 1, 1982 through the date of filing the application, or the requisite period. 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.*

As discussed above, the applicant has provided conflicting information and documentation in support of his application. The applicant has not provided any objective evidence to explain or

reconcile the contradictions. Thus, the remaining documentation submitted by the applicant in support of his application consisting of – affidavits from individuals who claim to have known the applicant in the United States during the requisite period, copies of handwritten receipts – is suspect and not credible. All the affiants claim to have known the applicant in the United States from 1982. The affiants did not have direct personal knowledge of the events and circumstances of the applicant’s residency in the United States during the requisite period. The affiants did not account for the applicant’s numerous trips outside the United States. Nor did the affiants provide details about the nature and extent of their relationships with the applicant in the United States during the years. Therefore, it must be concluded that the applicant has failed to establish his claim of continuous unlawful residence in the United States for the duration of 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.

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 on this basis.

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