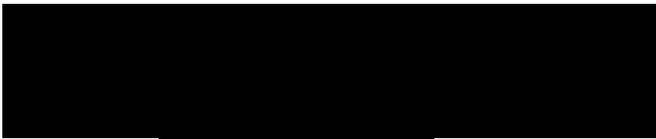




U.S. Citizenship
and Immigration
Services

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

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FILE:

[Redacted]
MSC-06-101-24544

Office: LOS ANGELES

Date: **AUG 29 2008**

IN RE:

Applicant:



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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, 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, Los Angeles. 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. 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.

On appeal, the applicant asserts that during his interview he testified that he came to the United States in March 1981. The applicant notes that he traveled to Mexico on or about May 29, 1982 and returned to the United States on or about July 3, 1982. The applicant notes that he again traveled to Mexico on or about September 8, 1984 and returned to the United States in October 1984. The applicant states that his absences from the United States have not exceeded 180 days.

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 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).

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 has submitted sufficient credible evidence to meet his or her burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687 Application and Supplement to Citizenship and Immigration Services (CIS) on January 9, 2006. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant showed that during the requisite period he resided in Mission Hills, California from March 1981 until April 1982; Pico Rivera, California from June 1982 until December 1986; and Bell, California from January 1987 until February 1990. At part #33, where applicants are asked to list their employment in the United States since entry, the applicant showed that he was employed with ██████████ Cleaning in Northridge, California from April 1981 until March 1982; Moon Enterprise in Pico Rivera, California from June 1982 until December 1986; and So. California Dyeing & Finishing Co. in Carson, California from January 1987 until December 1989. Notably, the applicant failed to fully complete the wage section on this part of the application. Furthermore, he did not provide his occupation for his employment with ██████████ Cleaning and So. California Dyeing & Finishing Co. The applicant’s failure

to complete this information draws into question the credibility of his claim of continuous residence in the United States during the requisite period.

The applicant submitted the following documentation:

- An affidavit from [REDACTED] dated December 19, 2005, which provides:

. . . I have known [REDACTED] since June, 1981. When I first met him, he indicated to me that [he] just came to the United States in March of that year. We became friends and have been friends since then; We job hunted together; did day jobs together and started attending the same church together, which we still attend today; To the best of my knowledge and recollection, [REDACTED] has lived continuously in the United States [sic] since about March, 1981 . . .

This affidavit fails to establish how [REDACTED] first became acquainted with the applicant. It does not state whether they first met in the United States or abroad. In addition, the affidavit does not provide any details on [REDACTED] relationship with the applicant during the requisite period. The affidavit states that they job hunted together, did day jobs together, and started attending the same church together. However, it does not provide the type(s) and location(s) of the “day jobs” where they were employed. Nor does it provide the name and location of their church. Furthermore, there is no indication that they engaged in these activities during the requisite period. Given the deficiencies in this affidavit, it is without any probative value as evidence of the applicant’s residence in the United States during the requisite period.

- Identical affidavits from [REDACTED] dated December 16, 2005, and [REDACTED] dated December 20, 2005, which provide:

. . . I have known [REDACTED] since June, 1981. We first met him at a church we were attending When we first met him, he indicated to us that he had just come [sic] to the United States in March of that year. We became family friends and have been friends since then; We attended the same church in June 1981 and still attend that church till today; To the best of my knowledge and recollection, [REDACTED] has lived continuously in the United States [sic] since about March, 1981 . . .

These affidavits fail to establish the location of where the affiants first met the applicant. The affidavits state that the affiants first met the applicant at a church. However, they do not indicate the name of the church or whether it is located in the United States or abroad. Moreover, the affidavits do not establish the affiants’ relationship with the applicant in the United States during the requisite period. The affidavits state that the affiants are family friends with the applicant, but do not provide any relevant details. Relevant details would include the type and frequency of contact the affiants maintained with the applicant. Given

the deficiencies in the affidavits, they are without any probative value as evidence of the applicant's residence in the United States during the requisite period.

- An affidavit from [REDACTED] dated December 26, 2005, which provides:

. . . I have known [REDACTED] since he was born. He is my brother. When he first came to the United States in 1981, I lived with him; To the best of my knowledge and recollection, [REDACTED] has lived continuously in the United States [sic] since about March, 1981; . . .

Although the affidavit states that [REDACTED] resided with the applicant in 1981, it does not provide their residential address or duration of their joint residence. The affidavit offers no other information on [REDACTED] contact with the applicant in the United States during the requisite period. Given this deficiency, this affidavit is without any probative value as evidence of the applicant's residence in the United States during the requisite period.

On October 11, 2006, the applicant was interviewed for temporary resident status. The record shows that during the applicant's interview, he issued the following sworn statement:

I Entered into USA in March 1981 at San Isidro Border Illegally [sic]. I went to Mexico in March 1985 to get married and came back in July 1985 Illegally [sic]. Then I left the country in Sep. 1984 to see my wife returned in Jan. 1985. Illegally [sic] In Sep. 1987 I Applied for Amnesty and was denied [sic] for not enough proof. I don't remember in which [sic] office.

On January 24, 2007, the director issued a notice to deny the application. In denying the application, the director determined that during both of the applicant's trips to Mexico he was absent from the United States for over 45 days in a single absence and in aggregate over 180 days. The director further determined that the applicant failed to establish continuous unlawful presence in the United States before January 1, 1982. The director concluded that the applicant is not eligible for temporary resident status under section 245A of the Act.

On appeal, the applicant asserts that during his interview he testified that he came to the United States in March 1981. The applicant notes that he traveled to Mexico on or about May 29, 1982 and returned to the United States on or about July 3, 1982. The applicant notes that he again traveled to Mexico on or about September 8, 1984 and returned to the United States in October 1984. The applicant states that his absences from the United States have not exceeded 180 days. The applicant states that he has continuously resided in the United States during the requisite period.

The applicant's assertions on appeal are inconsistent with his written sworn statement, dated October 11, 2006. The applicant's sworn statement indicates that he was absent from the United States on two occasions: March 1985 until July 1985 and September 1984 until January 1985.

On appeal, the applicant asserts, “[d]uring the interview, I was asked to write what I stated. I was not sure that I wrote exactly what I stated because I don’t write well. Also, I was nervous because of the way I was being interviewed.” The applicant’s explanation does not overcome the basis for the director’s denial. The applicant is obligated to clarify the inconsistent and conflicting testimony by independent and objective evidence, and he has failed to do so in this instance. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The issue of the applicant’s absence from the United States during the requisite period relates to his ability to establish his continuous residence in the United States. According to 8 C.F.R. § 245a.2(h)(1), an applicant for temporary resident status shall be regarded as having resided continuously in the United States if, at the time of filing of the application, no single absence from the United States has exceeded 45 days, and the aggregate of all absences has not exceeded 180 days between January 1, 1982 through the date the application for temporary resident status is filed, unless the applicant can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed, the alien was maintaining residence in the United States, and the departure was not based on an order of deportation.

During the applicant’s interview he issued a sworn statement that indicates he traveled to Mexico in March 1985 to get married and he returned to the United States in July 1985. The statement further provides that he left the United States in September 1984 to see his spouse and returned in January 1985. Both of these absences from the United States are in excess of 45 days. Pursuant to 8 C.F.R. § 245a.2(h)(1), if the applicant's absence exceeds the 45-day period allowed for a single absence, it must be determined if the untimely return of the applicant to the United States was due to an "emergent reason." Although this term is not defined in the regulations, *Matter of C-*, defines emergent as "coming unexpectedly into being." 19 I&N Dec. 808 (Comm. 1988). The applicant has failed to indicate that there was an emergent reason for his absence to exceed the 45-day period allowed for a single absence. Therefore, the applicant is ineligible for temporary resident status based on this break in continuous residence.

Furthermore, the applicant has failed to provide credible, reliable and probative evidence of his residence in the United States during the requisite period. The applicant has not provided sufficient evidence to establish that he entered the United States prior to January 1, 1982. Nor has he established that he has resided in the United States during the requisite period. The applicant has been given the opportunity to satisfy his burden of proof with a broad range of evidence. See 8 C.F.R. § 245a.2(d)(3). The applicant submitted as evidence of his residence in the United States during the requisite period, four affidavits. These affidavits lack considerable detail on the affiants’ relationship with the applicant in the United States during the requisite period. As such, they are without any probative value as corroborating evidence. Pursuant to 8 C.F.R. § 245a.2(d)(6), the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. Since the applicant’s documentation is without

any probative value, he has not furnished sufficient evidence to meet his burden of proof in this proceeding.¹

In this case, the absence of credible and probative 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 lack of credible supporting documentation, it is concluded that 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.

¹ It should also be noted that a Federal Bureau of Investigation report based upon the applicant's fingerprints reveals that on April 4, 1994 he was arrested by the Bell Gardens Police Department and charged under section 11366.7 of the California Health & Safety Code for *Selling Drugs for Unlawful Manufacture*. The punishment for this offense is a term of imprisonment not exceeding one year. Cal. Health & Safety Code Ann. § 11366.7 (West 1994). Since the applicant has not provided court documents related to this arrest, the final disposition of the charge remains unknown.