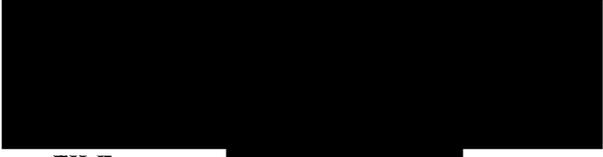




U.S. Citizenship
and Immigration
Services

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FILE: [Redacted] MSC 04 352 10004

Office: CHICAGO

Date: AUG 03 2007

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. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, 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.


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, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined the applicant had not demonstrated that she had continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that he attempted to file a Form I-687, Application for Status as a Temporary Resident, with the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS) in the original legalization application period of May 5, 1987 to May 4, 1988. Therefore, the director determined that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and denied the application.

On appeal, the applicant asserts she has lived in the United States since prior to January 1, 1982. The applicant indicates that she intends to submit an appellate brief and/or additional evidence. However, it appears, instead, that she has supplemented the record with copies of documentation that had been previously submitted in her effort to establish continuous residence during the requisite statutory period.

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 Immigration and Nationality Act (Act), 8 U.S.C. § 1255a(a)(2).

An applicant applying for adjustment to temporary resident status must 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).

For purposes of establishing residence and presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the alien attempted to file a completed Form I-687 application and fee or was caused not to timely file, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

An alien applying for adjustment of status 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. See 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.* 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 (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 has furnished sufficient credible evidence to demonstrate that she resided in the United States from prior to January 1, 1982 through the date she attempted to file a Form I-687 application with the Service in the original legalization application period of May 5, 1987 to May 4, 1988.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided a number of contemporaneous documents verifying her continuous residence in the United States from 1988 forward. The director also noted that documents were submitted to establish the applicant's presence in the United States in January 1985, but concluded, based on other observations, that the applicant failed to establish her continuous residence in the United States since prior to January 1, 1982 through 1987. More specifically, the director discussed the affidavits from [REDACTED] and [REDACTED] and the claims made by each affiant. The director also discussed the communication between the service officer and each affiant during which each affiant conveyed information that was not consistent with information conveyed previously in their respective affidavits. Namely, while in his affidavit [REDACTED] claimed to have known the applicant since September of 1980, in his subsequent conversation with a Service officer he claimed that his acquaintance with the applicant did not commence until 1982. Similarly, while [REDACTED] claimed in her affidavit, which was dated November 22, 2000, that her acquaintance with the applicant goes back 15 years, thereby suggesting that she has known the applicant since approximately 1985, in her conversation with a Service officer she indicated that she has known the applicant since 1982. Thus, in attempting to verify the information each affiant originally conveyed in his/her affidavit, the service officer who contacted these individuals discovered that neither maintained his/her original claim.

Additionally, [REDACTED] claim that the applicant was in the United States as early as 1980 is not consistent with the applicant's own claim to have first entered the United States some time in 1981. More specifically, the record shows that the applicant submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, on September 16, 2004. At No. 30 of the Form I-687 application where applicants are asked to list all residences in the United States since first entry, the applicant showed her first address in the United States to be in Alhambra, California, from 1981 to 1983.

Thus, on the application, which the applicant signed under penalty of perjury, she showed that she resided in the United States since 1981. However, the only evidence submitted to support the claim that the applicant resided in the United States prior to 1982, i.e., the affidavit [REDACTED] is inconsistent with the applicant's own claim.

On appeal the applicant submits documentation, most of which was previously provided, and fails to submit a brief, as she indicated she intended to do, or additional supporting evidence in an effort to reconcile the inconsistencies discussed above. The AAO notes that while the director failed to discuss the 1984 rent receipt showing that the applicant's husband paid rent in July of 1984, it is noted that the receipt is addressed only to the applicant's husband and does not establish the applicant's U.S. presence at that time. Moreover, even if the AAO were to accept this rental receipt as evidence of the applicant's presence in the United States in July of 1984, here presence in the United States during the remainder of that year still remains in question. Similarly, the letter dated September 27, 1981 from the head priest of a temple in Los Angeles discusses the residence of the applicant's husband and does not include any reference to the applicant herself.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-84 period, provided only a single document attesting to the applicant's presence in the United States in January of 1985, and has submitted attestations from individuals whose respective claims are inconsistent with that of the applicant's.

The absence of sufficiently detailed supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of this 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 contradictory statements on her applications and her reliance upon documents with minimal probative value, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the date she attempted to file a Form I-687 application 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.