

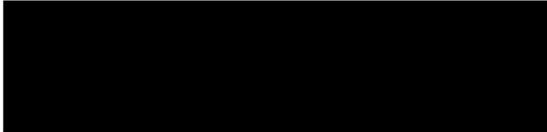
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U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



**U.S. Citizenship  
and Immigration  
Services**

**PUBLIC COPY**



**41**

FILE:



Office: Los Angeles

Date:

**AUG 13 2007**

MSC 06 080 10801

IN RE:

Applicant:



PETITION: 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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter 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.

A handwritten signature in black ink, appearing to be "Robert P. 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, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined that 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 between May 5, 1987 to May 4, 1988. Therefore, the district director concluded 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 reiterates her claim of residence in this country since 1981. The applicant asserts that any discrepancies in her testimony that occurred during her interview were the result of her being nervous and becoming confused about dates. The applicant includes copies of previously submitted documentation as well as new documents in support of her appeal.

An applicant for temporary residence 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) and 8 C.F.R. § 245a.2(b).

An alien 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 and 8 C.F.R. § 245a.2(b)(1).

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. Paragraph 11, page 6 of the CSS Settlement Agreement and paragraph 11, page 10 of the Newman Settlement Agreement.

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. 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 including affidavits is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

8 C.F.R. § 245a.2(d)(3)(v) states that attestations by churches, unions, or other organizations to the applicant's residence by letter must: identify applicant by name; be signed by an official (whose title is shown); show inclusive dates of membership; state the address where applicant resided during membership period; include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; establish how the author knows the applicant; and, establish the origin of the information being attested to.

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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to establish continuous residence 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 from May 5, 1987 to May 4, 1988. Here, the submitted evidence is not relevant, probative, and credible.

The record shows that the applicant submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on December 19, 2005. 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 listed [REDACTED] in Newhall, California

from 1980 to 1988, and [REDACTED] in Newhall, California from 1988 to 1989. The applicant provided no explanation as to why she failed to list the number of her address of residence on [REDACTED] in Newhall, California for that portion of the requisite period that she resided on this street in 1988. At part #31 of the Form I-687 application where applicants were asked to list all affiliations or associations with clubs, organizations, churches, unions, business, etc., the applicant listed "None."

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted a declaration signed by [REDACTED]. [REDACTED] stated that the applicant came to live with her at her residence at [REDACTED] in Newhall, California in 1980 while she was pregnant with her son [REDACTED]. [REDACTED] noted that she subsequently gave birth to her son on July 25, 1981 and that the applicant continued to live with her babysitting her son. [REDACTED] declared that she subsequently gave birth to her daughter [REDACTED] in 1984 and the applicant continued living with her while babysitting her children. [REDACTED] asserted that the applicant went to Mexico to be married at the end of 1987 and that the applicant no longer worked for after her return to the United States. [REDACTED] stated that she accompanied the applicant when she unsuccessfully attempted to apply for legalization at the Service office in Los Angeles, California shortly after her trip to Mexico.

The applicant included declarations that are signed by [REDACTED] and [REDACTED] respectively. Both affiants indicated that they considered the applicant to be a member of their family because she lived with and babysat them as children beginning in 1981 up through the end of 1987.

The applicant provided a declaration signed by [REDACTED] who noted that she had known the applicant since January 1984 when she and the applicant met at church. However, [REDACTED] testimony that she met the applicant at church does correspond to the applicant's testimony as she listed "None" at part #31 of the Form I-687 application where applicants were asked to list all affiliations or associations with clubs, organizations, churches, unions, business, etc. While [REDACTED] attested to the applicant's residence in this country in this country since 1984, she failed to provide any specific and verifiable testimony such as the applicant's address(es) of residence to corroborate her claim of residence in the United States subsequent to 1984. In addition, [REDACTED] failed to provide any testimony relating to the applicant's residence in this country from prior to January 1, 1982 up through 1984.

The applicant submitted a declaration that is signed by [REDACTED]. [REDACTED] declared that he had known the applicant since 1985 and that he was a friend of the applicant and her husband. [REDACTED] stated that he and the applicant were congregants of the same church. However, [REDACTED] statement that he and the applicant were congregants at the same church conflicted with the applicant's testimony on this matter because she listed "None" at part #31 of the Form I-687 application where applicants were asked to list all affiliations or associations with clubs, organizations, churches, unions, business, etc. Further, [REDACTED] did not offer any detailed and pertinent testimony to confirm the applicant's claim of residence in this country after they

had met in 1985. Additionally, [REDACTED] failed to attest to the applicant's residence in the United States from prior to January 1, 1982 up until 1985.

The applicant included a declaration signed by [REDACTED] who asserted that he became acquainted with the applicant when she was very young as both he and the applicant were from the same place in Mexico. [REDACTED] noted that he met the applicant in the United States for the first time in 1985 and that he remained in contact with her by visiting her family. Although [REDACTED] indicated that the applicant had resided in this country since 1985, he failed to provide any relevant and verifiable information to substantiate her claim of residence in the United States since 1985. Moreover, [REDACTED] failed to provide any testimony regarding the applicant's residence in this country from prior to January 1, 1982 through 1985.

The applicant provided a declaration that is signed by [REDACTED]. [REDACTED] declared that she had known the applicant since 1985 and she and the applicant had attended the same church since this date. However, [REDACTED]' testimony that she and the applicant attended the same church since 1985 does correspond to the applicant's testimony as she listed "None" at part #31 of the Form I-687 application where applicants were asked to list all affiliations or associations with clubs, organizations, churches, unions, business, etc. While Ms. [REDACTED] attested to the applicant's residence in this country in this country since 1985, she failed to provide any specific and verifiable testimony such as the applicant's address(es) of residence to corroborate her claim of residence in the United States subsequent to 1985. In addition, [REDACTED] failed to provide any testimony relating to the applicant's residence in this country from prior to January 1, 1982 up through 1985.

The applicant submitted a declaration signed by [REDACTED] who stated that she witnessed the applicant's arrival into the United States in 1980. [REDACTED] asserted that she and the applicant met at church. However, [REDACTED] testimony that she met the applicant at church does correspond to the applicant's testimony as she listed "None" at part #31 of the Form I-687 application where applicants were asked to list all affiliations or associations with clubs, organizations, churches, unions, business, etc. Although [REDACTED] indicated that the applicant had resided in this country since 1980, she failed to provide any relevant and verifiable information to substantiate the applicant's claim of residence in the United States since prior to January 1, 1982.

The applicant provided a declaration that is signed by [REDACTED]. [REDACTED] claimed that he witnessed the applicant's arrival into this country in 1980 and had known her for over twenty-five years. However, [REDACTED] failed to provide any detailed and specific testimony such as the applicant's address(es) of residence that would tend to corroborate her claim of residence in the United States for the requisite period. He failed to state the frequency of his contact with the applicant as well.

The record shows that the applicant was subsequently interviewed relating to her Form I-687 application at CIS' District Office in Los Angeles, California on April 18, 2006. The notes of the

interviewing officer demonstrate that the applicant indicated that she had met and been acquainted with declarant [REDACTED] since 1999, rather than 1980 as [REDACTED] had attested in his declaration. The notes further reveal that the applicant testified that she and declarant Jesus [REDACTED] became friends in 1994, instead of 1985 as [REDACTED] had previously stated in his declaration. The applicant testified that she became friends with declarant [REDACTED] in 1990 despite the fact that [REDACTED] declared she had met the applicant at church in 1984. The applicant claimed that she met declarant [REDACTED] in 1990, rather than 1985 as Mr. [REDACTED] had stated in his declaration. Lastly, the applicant indicated that she became friends with declarant [REDACTED] in 1990, instead of 1980 as [REDACTED] had testified in her declaration. The applicant's testimony regarding the dates she met and became acquainted with each of declarants listed above in this paragraph directly contradicted each declarant's testimony regarding the date each met and became acquainted with the applicant. The fact that the applicant directly contradicted these declarants undermined her credibility, the credibility of these declarants and their testimony, and the credibility of the applicant's claim of residence in this country for the period question.

In the notice of denial issued on April 20, 2006, the district director questioned the veracity of the applicant's claimed residence in the United States since prior to January 1, 1982. Specifically, the district director noted the conflicts and contradictions cited above, as well as discussing the lack of sufficient credible documentation to support her claim of residence in this country for the requisite period. The district director determined that the applicant had failed to establish her continuous residence in this country since prior to January 1, 1982, and, therefore, denied the application.

On appeal, the applicant provides copies of previously submitted documentation as well as new documents in support of her appeal. The applicant submits a letter signed by [REDACTED] who states that she has known the applicant since 1981 as a result of her friendship with the sister of [REDACTED]. [REDACTED] declares that the applicant was living with [REDACTED] in Newhall, California at that time and she subsequently developed a friendship with the applicant. Although [REDACTED] provides the name of the town where the applicant purportedly lived with [REDACTED], she fails to attest to specific and detailed information such as the applicant's address of residence in the period in question.

The applicant includes a letter that is signed by [REDACTED]. [REDACTED] notes that she has known the applicant from 1985 up to the present. [REDACTED] indicates that she is the sister of [REDACTED] with whom the applicant lived in Newhall, California when she and applicant mutually met in 1985. However, [REDACTED] fails to attest to the applicant's residence in the United States from prior to January 1, 1982 through 1985. While [REDACTED] attests to the name of the town where the applicant purportedly lived with [REDACTED], she did not provide any relevant and verifiable testimony such as the specific addresses where the applicant resided in the requisite period.

The applicant provides a letter signed by [REDACTED] who recounts that he has known the applicant since 1987. [REDACTED] states that he met the applicant through his sister-in-law [REDACTED], when he started dating his current wife, [REDACTED]. Nevertheless, [REDACTED]

fails to provide any testimony regarding the applicant's residence in the United States from prior to January 1, 1982 through the date he and the applicant first met in 1987. In addition, does not provide any pertinent and detailed testimony that would tend to substantiate the applicant's claim of residence in this country after 1987.

The applicant submits a letter that is signed by . declares that first met the applicant in 1986 through mutual friends and that she and the applicant subsequently developed and maintained their own friendship. Although indicates that the applicant resided in the United States since 1986, she fails to provide direct verifiable testimony relating to her residence in this country since such date. Moreover, fails to attest to the applicant's residence in the United States in that period from prior to January 1, 1982 through that date she and the applicant first met in 1986.

The applicant provides a separate statement in which she reiterates her claim of residence in this country since 1981. The applicant asserts that any discrepancies in her testimony that occurred during her interview were the result of her being nervous and becoming confused about dates. However, this explanation is not sufficient to explain the fact that the applicant directly contradicted five declarants who had testified to the applicant's residence in the United States for all or a portion of the requisite period when she testified that she had actually met the five declarants beginning in 1990 through 1999.

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. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

The absence of sufficiently detailed supporting documentation and the existence of conflicting evidence that contradicts critical elements of the applicant's claim of residence seriously undermines the credibility of the supporting documents, as well as the credibility of the applicant's claim of residence in this country for the requisite period. Pursuant to 8 C.F.R. § 245a.2(d)(3), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. The applicant has failed to submit sufficient credible documentation to meet her burden of proof in establishing that she has resided in the United States since prior to January 1, 1982 by a preponderance of the evidence as required under both 8 C.F.R. § 245a.2(d)(3) and *Matter of E- M-*, 20 I&N Dec. 77 (Comm. 1989).

Given the applicant's reliance upon supporting documents with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 as required under section 245A(a)(2) of the Act. 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.