



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED]
MSC 06 088 17322

Office: LOS ANGELES

Date: DEC 26 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:

[REDACTED]

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, Los Angeles, California. 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, on December 27, 2005. The district director determined that the applicant had not established by a preponderance of the evidence that she had continuously resided in the United States in an unlawful status for the duration of the requisite period. The district director denied the application as the applicant had not met her 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 reiterates her claim of continuous residence in the United States during the requisite period and submits additional evidence to corroborate her claim.

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)(1).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "until the date of filing" shall mean until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file. 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).

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. 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 27, 2005. At part #30 of the Form I-687 application where applicants are instructed to list all residences in the United States since first entry, the applicant indicated that she resided at [REDACTED] Santa Ana, California: from February 1981 to July 1988. At part #32, where applicants are instructed to list all absences outside the United States since initial entry, the applicant indicated that she was in Mexico visiting family from May 1982 to June 1982, from August 1984 to September 1984, and from December 1987 to January 1988. At part #33, where applicants are instructed to list all employment in the United States during the requisite period, the applicant indicated that she was working as a self-employed housekeeper from February 1981 to January 2000.

In an attempt to establish continuous residence in the United States during the requisite period, the applicant submitted an unsworn statement dated November 24, 2005, from [REDACTED] a resident of Santa Ana, California. Ms. [REDACTED] stated that she first met the applicant in 1981 in Santa Ana, California. Ms. [REDACTED] further stated that the applicant lived in her home, located at “[REDACTED] Santa Ana, California” from 1981 to 1988. Ms. [REDACTED] provided no information as to how she met the applicant.

In a separate letter dated November 29, 2005, [REDACTED] stated that the applicant worked for her as a housekeeper for 20-25 hours per week for an "hourly wage" from February 1981 until August 1988.

The applicant also submitted an unsworn statement dated November 15, 2005, from [REDACTED] the husband of [REDACTED]. Mr. [REDACTED] stated that he first met the applicant in Mexico, and later encountered her in the United States in 1981. Mr. [REDACTED] explained that he knew the applicant entered the United States without inspection near San [REDACTED] California, because the applicant told him, and he had no reason to disbelieve her. Mr. Torres relied on second-hand information provided to him by the applicant in his testimony regarding her date and manner of entry into the United States. Therefore, this statement will be accorded little evidentiary weight.

Mr. [REDACTED] stated that the applicant resided with him and his wife in their home located at [REDACTED] Santa Ana, California" from 1982 to May 1988. However, Mr. [REDACTED] provided scant information about the applicant.

On appeal the applicant reiterates her claim that she resided continuously in the United States during the requisite period and provides an unsworn statement December 28, 2005, from [REDACTED], a resident of Arleta, California. Ms. [REDACTED] stated that she first met the applicant in December 1981 when the applicant came to her home to interview for a possible job. Ms. [REDACTED] explains that she has no direct personal knowledge of the date the applicant first entered the United States, but friends told her later that the applicant first came to this country in February 1981. Ms. [REDACTED] states that she can attest to the applicant's residence in the United States between 1982 and 1982 because she used to see the applicant at the house of a mutual friend. However, Ms. [REDACTED] provided no information as to the name and address of the "mutual friend," nor did she provide any information regarding the frequency of her contact with the applicant during the requisite period. Furthermore, Ms. [REDACTED] failed to state how she dated her initial contact with the applicant. Therefore, this affidavit will be accorded little evidentiary weight.

The applicant also submits an un-notarized affidavit dated December 28, 2005, from [REDACTED] Torres, a resident of Arleta, California. Ms. [REDACTED] states that she first met the applicant in November 1981 at a family reunion in San Fernando, California. Ms. [REDACTED] explains that she has personal knowledge that the applicant was living in the United States during the period from 1982 to 1988 "because I use[d] to see her often at family reunions, Christmas and in birthday parties." However, Ms. [REDACTED] provided no verifiable information such as the applicant's addresses in the United States during the requisite period. Therefore, this affidavit will be accorded little evidentiary weight.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period, and has submitted attestations from only four people concerning that period, all of which contain statements that contradict the applicant's

testimony on her Form I-687 and during her interview or lack sufficient verifiable information to corroborate the applicant's claim.

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 application and during her interview 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.