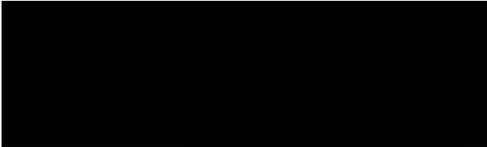




U.S. Citizenship  
and Immigration  
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identifying data deleted to  
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FILE: [Redacted]  
MSC-05-230-12052

Office: Newark

Date: **JUN 05 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, Newark, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director concluded that the applicant failed to prove that she entered the United States before January 1, 1982 and resided unlawfully in the United States since before January 1, 1982 through April 4, 1988, and thus, denied the application. The director adjudicated the application pursuant to the Legal Immigration Family Equity (LIFE) Act Legalization provisions under 8 C.F.R. § 245a.15. The director's application of the regulations under the LIFE Act Legalization provisions was in error and is withdrawn. The applicant filed an I-687, Application for Status as Temporary Resident, pursuant to the CSS/Newman Settlement Agreements. Therefore, the issue in this proceeding is whether the applicant has demonstrated that she continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that she 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.

On appeal, the applicant asserts that she entered the United States unlawfully and resided in the United States unlawfully.

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.

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 May 18, 2005. Part 30 of the I-687 application requests the applicant to list all of her residences in the United States since her first entry. The applicant reported that she resided at [REDACTED] Fort Pierce, FL, from February 1981 until March 1988 and [REDACTED] North Bergen, NJ, from August 2000 until the present time. Part 33 of the I-687 application requests the applicant to list her employment in the United States since her entry. The applicant reported that she was employed at Boatwright Citrus in an unspecified occupation from February 1981 until February 1988. The applicant reported that since August 2000 she has been employed at [REDACTED] North Bergen, NJ in an unspecified occupation. However, the applicant has failed to provide credible evidence to corroborate her purported dates of residence and employment during the requisite period.

The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of evidence to establish proof of residence in the United States during the requisite period. Examples of documentation that can be submitted include: past employment records; utility bills; hospital or medical records; attestations by churches, unions or other organizations; deeds, mortgages, contracts to which the applicant has been a party; and letters or correspondence between the applicant and another person or organization. The applicant has failed to provide such corroborating evidence. An applicant may also provide "any other relevant document" as proof of his residence. 8 C.F.R. § 245a.2(d)(3)(vi)(L). The applicant has submitted three documents entitled "Affidavit" to corroborate her residence in the United States during the requisite period. The weight to be given to affidavits depends on the totality of the circumstances. Affidavits are evaluated based on the affiant's specific, personal knowledge of the applicant's whereabouts during the time period in question.

The applicant submitted an "Affidavit" from [REDACTED] of Ellis Appliances. This document is a "fill in the blank" statement, dated November 21, 2005, and provides that the applicant was a customer from 1981 until 1988. Several deficiencies can be found in this document. [REDACTED] states that his customer's name is "[REDACTED]" and "[h]e was a customer off and on from 1981 to 1988" (emphasis added). The applicant's birth certificate and I-687 application provide that the applicant's gender is female, not male as indicated in [REDACTED] statement. The applicant's birth certificate provides that her first name is "[REDACTED]" while her father's first name is "[REDACTED]". Additionally, [REDACTED] states that, "[t]his information is base [sic] on my personal recollection and no other records are available." However, he fails to explain his personal recollection of the applicant. Similarly, the [REDACTED] statement that the applicant "was a customer off and on from 1981 to 1988" is vague and fails to provide specific information on the extent of his contact with the applicant and personal knowledge of the applicant's residence in the United States during those dates. The lack of detail and inconsistency in [REDACTED] statement undermines its overall credibility, and therefore, it cannot be given any weight as corroborating evidence.

The applicant submitted a "Verification of Employment Affidavit" from [REDACTED] of Boatwright Citrus. This document is another "fill in the blank" statement, which is dated April 10, 2005, and provides that the applicant was an employee of the business from February 1981 until February 1988. This document is deficient in several respects. [REDACTED] states that the applicant's name is "[REDACTED]" and fails to provide her first name, "[REDACTED]". The document also notes that, "[e]xcept for this personal attestation- no other records are available." [REDACTED] fails to explain the extent of his contact with the applicant and his personal knowledge of the applicant's residence in the United States during her purported dates of employment. The only information provided by [REDACTED] is that the applicant was employed from February 1981 until February 1988 in the position of a fruit picker and she was paid an unspecified amount of cash on a weekly basis. The information contained in this statement is vague and lacks specific information on the applicant's employment at Boatwright Citrus.

██████████ has also completed a "Verification of Residence Affidavit," which provides that the applicant was his tenant from February 1981 until March 1988. This document contains several deficiencies. ██████████'s statement provides that, "██████████ and *his* family were a [sic] tenants of mine" (emphasis added). This statement of the applicant's identity as ██████████ with her gender as male is again inconsistent with the applicant's I-687 application and birth certificate. This repeated inconsistency draws into question whether the authors of these statements, ██████████ and ██████████ have actual knowledge of the applicant. This document notes that, "[e]xcept for this personal attestation- no other records are available." Mr. ██████████ again fails to explain the extent of his contact with the applicant and his personal knowledge of the applicant's residence in the United States during her purported dates of residence as his tenant. The only information provided in ██████████ statement is that the applicant was a tenant from February 1981 until March 1988 at ██████████ Fort Pierce, FL, and she paid an unspecified amount of rent on a weekly basis. The lack of detail and inconsistencies found in ██████████'s two statements undermines their overall credibility, and therefore, they cannot be given any weight as corroborating evidence.

The regulation at 8 C.F.R. § 245a.2(d)(6) provides that, "[t]he sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility." Here, the submitted evidence is not relevant, probative, and credible. The applicant has failed to establish by a preponderance of the evidence that she has resided in the United States during the requisite period. 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. It is concluded that the applicant 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 with the Service, 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.