

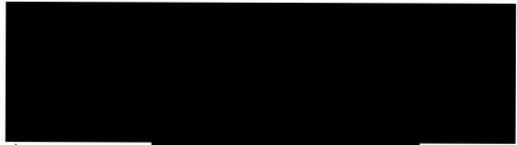
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and Immigration  
Services**

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FILE:

MSC 06 031 14220

Office: NEWARK

Date:

**AUG 01 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. 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.

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, (director) Newark, New Jersey. 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 she had continuously resided in the United States in an unlawful status for the duration of the requisite period. Specifically, the director considered the applicant's Form I-687 application and documents submitted in support of her claim, as well as her testimony at her legalization interview. The director denied the application, finding that 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 asserts that the evidence submitted clearly shows that she entered the United States prior to January 1, 1982 and had continuously resided in the United States since then, and that the all the affiants who submitted affidavits on her behalf were resident in the United States prior to January 1, 1982. **The applicant then referred to evidence already submitted in support of her assertions that she is eligible for the benefit sought.**

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).

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)(1) 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).

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.

Although the regulations provide an illustrative list of contemporaneous documents that an applicant may submit, the list also permits the submission of affidavits and any other relevant document. See 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

As noted above, the applicant has the burden of proving by a preponderance of the evidence that she has resided in the United States for the requisite period. 8 C.F.R. § 245a.2(d)(5). Pursuant to the regulation at 8 C.F.R. § 245a.2(d)(3) documentation an applicant may submit to establish proof of continuous residence in the United States may include, but is not limited to: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts or letters. An applicant may also submit any other relevant document pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The applicant is a native of the Philippines, who claims to have lived in the United States since May 1981, filed a Form I-687, Application for Status as a Temporary Resident Under Section 245A of the Act, and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet on October 31, 2005. It is noted that the applicant was born on May 11, 1971 and was only 10 years old for most of 1981. As evidence of her continuous unlawful residence in the United States during the years 1981-1988 the applicant submitted the following evidence:

- An affidavit from [REDACTED] a resident of Avenel, New Jersey, dated December 26, 2005, stating that he met the applicant at a Christmas party at her aunt's house in December 1981, that in January 1988, he accompanied the applicant to the INS office in Patterson, New Jersey, to file her completed application for amnesty and was turned away by an Immigration and Naturalization Service officer, that he knows for a fact that the applicant has resided continuously in the United States in an unlawful status from before 1982 to May 1984, except for when the applicant left the United States for a brief period without permission, and that between 1982 and 1988, he has seen and met the applicant several times at various social events in New York and New Jersey.
- An affidavit from [REDACTED] a resident of St. Albans, New York, dated May 7, 2006, stating that between 1972 and 1988, he resided at [REDACTED], New York, where he met the applicant at a party in December 1981, that he was informed that the applicant entered the United States before 1982, that he met the applicant in 1981 and that he and the applicant have met several times at various social events between 1982 and 1988.
- An affidavit from [REDACTED], a resident of Douglassville, Pennsylvania, dated February 11, 2007, stating she arrived in the United States in October 2002, that the applicant is her sister, that the applicant left the Philippines in May 1981 and that she knows for a fact that the applicant has continuously resided in the United States since then, except for a brief casual absence, and that she has been in constant communication with the applicant since then.

An affidavit from [REDACTED] a resident of Bayonne, New Jersey, dated February 19, 2007, stating that he believes that applicant entered the United States before 1982, because he met the applicant at a gathering in the summer of 1981, that he has often seen and met the applicant since then, and knows that the applicant has resided continuously in the United States since before 1982 to May 1988.

- An affidavit from [REDACTED], a resident of San Fernando, Pampanga, Philippines, dated February 15, 2007, stating that the applicant is her daughter, that the applicant left the Philippines for the United States in May 1981, that she was informed and believe that the applicant entered the United States before 1982 and resided continuously in the United States since then, except for brief and casual absences, that she is constant communication with the applicant over the years and know for a fact that the applicant has been residing in Jersey City, New Jersey since arriving in the United States in 1981.
- An affidavit from [REDACTED] of Pampanga, Philippines, dated September 26, 2007, stating that the applicant is her niece, that the applicant left the Philippines for the United States in May 1981 and that he knows for a fact that the applicant has continuously resided in the United States since then except for a brief and casual absence and she has been in constant communication with the applicant since she left the Philippines.
- Four letter envelopes all addressed to the applicant at [REDACTED] Jersey City, New Jersey with postmarks of July 1981, September 1981, December 1982, and December 1983, all from individuals from San Fernando, Pampanga, Philippines.
- Three tickets for Broadway shows dated June 15, 1982, May 25, 1983, and February 24, 1984.
- A Christmas card and a birthday card from [REDACTED] and [REDACTED] addressed to Ana dated December 21, 1981, and May 10, 1982, respectively.

The applicant was interviewed by a CIS officer in connection with her application for temporary residence status on January 11, 2007, and on the same day, was issued a Request for Evidence (RFE), requesting that she submit evidence of her physical presence and continuous residence in the United States from January 1, 1982 through May 4, 1988. On July 26, 2007, the director issued a Notice of Intent to Deny (NOID) the application, noting that the applicant failed to submit sufficient credible evidence of her continuous physical presence in the United States from January 1, 1982 through May 4, 1988. The applicant was granted 30 days to submit additional evidence.

In response to the NOID, the applicant asserted that the documents previously submitted were sufficient to establish her presence and continuous residence in the United States before January 1, 1982 through May 4, 1988. The applicant submitted no additional evidence.

On August 30, 2007, the director denied the application. The director noted that the evidence submitted failed to overcome the grounds for denial. The director concluded that the evidence of record failed to establish that the applicant entered the United States before January 1, 1982 and

thereafter resided continuously in the United States in an unlawful status through May 4, 1988, as required by the Act.

On appeal, the applicant reasserts her eligibility for the benefit sought and submits no additional documentation.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that she entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988. The AAO determines that she has not.

Three of the envelopes submitted by the applicant with postmarks of July 14, 1981, December 7, 1982 and October 24, 1981, complied with the dates the stamps were issued by the government of the Philippines. Scott 2006 Standard Postage Stamp Catalogue, Vol. 5, pp 238-239. However, the envelope with the postmark of September 8, 1981, is clearly fraudulent because the stamp, commemorating the International Year of Disabled Persons, had not yet been issued by the Philippines government in September 1981. As indicated in the Scott 2006 Standard Postage Stamp Catalogue, Vol. 5, pp 238-239, the 3.20p stamp commemorating the International Year of Disabled Persons was issued on October 24, 1981.

This fraudulent submission casts doubt on the credibility and reliability of the stamps as evidence of the applicant's residence in the United States in the 1980s. Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The AAO finds that the stamps have little probative value and are not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.

The affidavits by [REDACTED], have minimalist or fill-in-the-blank format with little personal input by the affiants. While they all claim to have known the applicant since 1981, the affiants provide almost no information about her life in the United States, where she worked during the 1980s, and their interaction with her over the years. None of the affiants provide information where the applicant lived during the period, the name or address of her aunt ( where some of the affiants claim to have met the applicant) or why the applicant, a 10-year old child in 1981, was not attending school during the time they claimed to have met her at parties and other various social gatherings in New York and New Jersey. Nor

are the affidavits accompanied by any documentary evidence from the affiants – such as photographs, letters, and the like – of their personal relationship with the applicant in the United States during the 1980s. In view of these substantive shortcomings, the AAO finds that the affidavits have little probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.

Equally lacking in probative value are the affidavits from the applicant's relatives, [REDACTED]. While they all claim to know that the applicant left the Philippines for the United States in 1981, the affiants do not demonstrate that they have personal knowledge that the applicant resided continuously in the United States since then, because they were not residing in the United States during the relevant period from 1981 through 1988.

The affidavit of [REDACTED] the applicant's mother, also lacks any details regarding how the applicant, a child of 10 in 1981, traveled to the United States without her parents or any other relative, where she resided and who she resided with in the United States and whether she attended school in those years. For the reasons discussed, the affidavit has no probative value of the applicant's residence in the United States from before January 1, 1982 through May 4, 1988.

The concert tickets for Broadway shows dated June 15, 1982, May 25, 1983 and February 24, 1984, do not bear the applicant's name nor her address and are therefore, of no probative value as evidence of the applicant's presence and residence in the United States before January 1, 1982 through May 4, 1988, and will not be accorded any weight in this proceeding.

The Christmas card and the birthday card, written to [REDACTED] dated December 21, 1981 and May 10, 1982 respectively, in handwritten notations, but have no accompanying envelopes, the applicant's address at the time or other markings to authenticate the dates. The AAO finds that these cards have no probative value as evidence of the applicant's residence in the United States in the years 1981 through 1988.

Based on the foregoing analysis of the evidence, the AAO concludes that the applicant has failed to establish that she entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988 as required under section 1104(c)(2)(B)(i) of the LIFE Act, 8 U.S.C. § 245A(a)(2)(A). Accordingly, the applicant is ineligible for temporary residence status under the LIFE Act.

**ORDER:** The appeal is dismissed. This decision constitutes a final notice of ineligibility.