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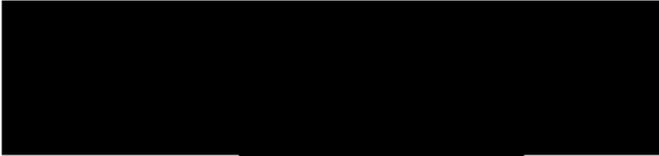
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
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Services

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FILE:

MSC 06 068 11938

Office: LOS ANGELES

Date:

**AUG 15 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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

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 7, 2005. The applicant was interviewed by a Citizenship and Immigration Services (CIS) officer on August 22, 2006. Upon review of the record including the applicant's testimony, the director denied the application on December 21, 2006. The director determined 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 she is eligible and re-submits affidavits and letters.

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 applicant attempted to file the application. 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 or attempting to file 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 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 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. See 8 C.F.R. § 245a.2(d)(6).

Even if the director has some doubt as to the truth, if the applicant 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 evidence to establish her entry into the United States prior to January 1, 1982 and continuous unlawful residence since such date through the date she attempted to file the application. The AAO only considers the evidence that is relevant and pertains to this time period.

On the Form I-687, the applicant listed her address as [REDACTED], Sylmar, California from January 1982 to January 1994. The applicant lists her date of birth as December 18, 1970, thus she would have been 11 years old when she first entered the United States. The applicant does not list any employment. The applicant indicates she left the United States in June 1987 to go to Mexico to visit family and returned to the United States in July 1987.

The record includes several affidavits that contain the following information relevant to the adjudication of the applicant's Form I-687 including:

- A March 8, 2006 affidavit signed by [REDACTED] who declares: that she has known the applicant since 1982; and that she met the applicant at a local community church.
- A March 8, 2006 affidavit signed by [REDACTED] who declares: that she has known the applicant since 1983; that she met the applicant through a mutual friend at a local community gathering; and that she and the applicant have been very close since they met.
- An August 14, 2006 form affidavit signed by [REDACTED] who declares: that the applicant resided in Piru, California from January 1981 to January 1986 and resided in the San Fernando Valley in California from January 1986 to present; that he has been good friends with the applicant's father; and that the longest period he has not seen the applicant is 0 years.
- An August 14, 2006 affidavit signed by [REDACTED] who declares: that she has known the applicant since 1983; that she met the applicant through a mutual friend;

that she and the applicant have become very close; that the applicant resided with her for some time many years ago; and that the applicant helped her out with a housekeeping job.

- An August 14, 2006 affidavit signed by [REDACTED] who declares: that she has known the applicant since 1985; that she met the applicant through her niece; and that the applicant and the affiant's niece visited her home frequently.
- A December 1, 2005 affidavit signed by [REDACTED] who declares: that he has known the applicant since 1986; that they were introduced through mutual friends; and that now he and the applicant are neighbors.
- A December 1, 2005 affidavit signed by [REDACTED] who declares: that she has known the applicant since 1987; and that the applicant likes to volunteer at local schools and community outreach programs.
- A December 1, 2005 affidavit signed by [REDACTED] who declares: that she has known the applicant since 1987; and that she met the applicant at the North Valley Occupational Center when she and the applicant were studying English.

At her interview on August 22, 2006, the applicant testified: that she had never attended school in the United States so had no school records; that she was married in Mexico in 1994; and that she had two children born in the United States in 1999 and 2003.

The AAO has reviewed all the affidavits listed and finds that the majority of the affidavits provide general information indicating that the affiant has known the applicant since a certain date but does not provide the pertinent details describing how the affiant met the applicant, does not include concrete information detailing interactions between the affiants and the applicant, and does not contain details of the claimed relationship of more than fifteen to twenty-five years. Such affidavits have little probative value. When an applicant is attempting to establish eligibility for this benefit with only affidavits, the applicant must provide affidavits that have some level of detail. For example, [REDACTED] claims that she met the applicant at a local community church but does not supply the name of the church. Similarly, the affidavits of [REDACTED] and [REDACTED] do not identify the mutual friend or niece through which they claim to have met the applicant. The affidavit of [REDACTED] does not identify the local schools or the capacity in which the applicant volunteers and does not provide information regarding the time frame of the volunteer work. Although the affidavit of [REDACTED] includes the location where the affiant met the applicant, the affiant does not provide the time frame for the English class that the affiant and the applicant took or whether the applicant attended regularly. Moreover, none of these affidavits include the time period prior to January 1, 1982. The affidavit of [REDACTED] although indicating the applicant's residence in 1981, appears inconsistent with the applicant's statement on the I-687 regarding her residences during the applicable time period. Based on the minimal and inconsistent information found in these affidavits, the AAO is unable to conclude that the affiant actually had personal knowledge that the applicant entered the United States prior to January 1, 1982 and resided in the United States for the requisite time period. The general nature of information that characterizes these documents lacks sufficient indicia to establish the reliability of their assertions.

When viewed as a whole, the information in the record lacks the necessary detail to substantiate the applicant's entry into the United States prior to January 1, 1982 and continuous unlawful residence in the United States for the requisite time period. The deficient and inconsistent affidavits submitted comprise the only evidence of the applicant's residence in the United States from prior to January 1, 1982 through the requisite time period. This information lacks credibility and probative value for the reasons above noted. The absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of her 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. The applicant has failed to meet her burden of proof and 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. The appeal will be dismissed.

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