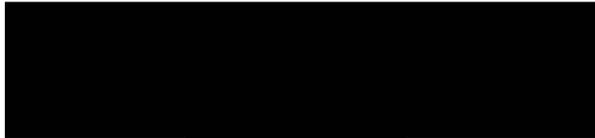


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FILE: [REDACTED]
MSC-06-102-16085

Office: LOS ANGELES

Date: **AUG 29 2008**

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-REPRESENTED¹

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

¹ It is noted that the Form I-687 application was prepared by Francisco Urrea, an immigration service provider. Although the application is accompanied by a Form G-28, Notice of Entry of Appearance by an Attorney or Representative, the immigration service provider has not established that it is a licensed attorney or an accredited representative authorized to undertake representations on the petitioner's behalf. See 8 C.F.R. § 292.1. Accordingly, the assertions of the immigration service provider will not be considered in this proceeding.

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. 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 denied the application because she found that the applicant failed to establish eligibility for Temporary Resident Status pursuant to the terms of the CSS/Newman settlement agreements. Specifically, the director found it more likely than not that the applicant was residing outside of the United States during the requisite period, based on the birth dates of the applicant's children and the dates that those births were registered with the government in Mexico.

On appeal the applicant states that she has resided continuously in the United States since 1981 and that she was absent from the United States from June 20, 1985 until July 20, 1985 and from August 1987 until September 4, 1987 for the birth of her children. The applicant further states that her children were registered by their grandmother, not by the applicant, and that the applicant was in the United States when her children's births were registered.

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) 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. See 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.* at 80. 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 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, 431 (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 for the duration of the requisite period. Here, the applicant has not met her burden of proof.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on January 10, 2006. At part #32 of the application, which asked applicants to list all absences from the United States since January 1, 1982, the only absence listed by the applicant was in October 1987. The applicant testified that she had been absent from the United States on two occasions during the requisite period, once from June 20, 1985 to July 20, 1985 and again from August 1987 until September 4, 1987. As noted by the director, information on birth certificates submitted by the applicant appears to conflict with her testimony regarding absences from the United States. Specifically, the applicant’s son [REDACTED]

[REDACTED] Mexico. His birth was registered on July 31, 1985. The registration document indicates that the mother was present on the date that the birth was registered. The applicant’s son [REDACTED] on [REDACTED]

[REDACTED] The birth was registered on October 30, 1987. The registration document indicates that the mother was present when the birth was registered.

The director found that the applicant’s presence in Mexico for the births and the registrations indicated that the applicant was residing in Mexico during the requisite period, rather than in the United States. On appeal, the applicant disputes this and states that her children’s grandmother registered the births in Mexico, and that the applicant had returned to the United States by the time that the births had been registered. However, the applicant fails to explain why the registration documents list the applicant as “present” for both of the registrations. This is a material inconsistency which detracts from the credibility of the applicant’s claim to have resided continuously in the United States throughout the requisite period.

The applicant also submitted several affidavits in support of her application. Specifically, the applicant submitted the following:

- An affidavit from [REDACTED] dated December 30, 2005. The affiant states that the applicant is her niece, and that the applicant moved into the affiant's residence at [REDACTED].
- An affidavit and an employment letter from [REDACTED], both dated December 30, 2005. The affiant states that she was residing at [REDACTED] and that the applicant lived with them at that time. The affiant also states that the applicant cared for the affiant's son, [REDACTED], from 1981 until 1986.
- Affidavits from [REDACTED] both dated December 30, 2005. Both affiants state that they were residing at [REDACTED] the applicant entered the United States and lived with them at that time. [REDACTED] also notes that the applicant took care of the affiant's sister's son, [REDACTED].
- An affidavit from [REDACTED] dated December 30, 2005. The affiant states he resided at [REDACTED] when the applicant entered the United States.

Although the dates and place of residence in these affidavits are consistent with information provided by the applicant on her Form I-687 application, the affidavits lack probative details regarding the applicant's residence in the United States. These affidavits also fail to address the issues discussed above regarding the applicant's absences from the United States. Given these deficiencies, these affidavits have little weight as evidence of the applicant's continuous residence in the United States during the requisite period.

The applicant also submitted the following affidavits in support of her application:

- Affidavits from [REDACTED]. The affiants, who are husband and wife, state that they have been in contact with the applicant since 1981. [REDACTED] states in his affidavit that the applicant "came to the United States on or around 1979." This conflicts with the applicant's own statements that she first entered the United States in 1981. Further, these affidavits lack probative details such as how the affiants date their initial acquaintance with the applicant, or the frequency or nature of their contact with the applicant during the requisite period. Given these deficiencies, these affidavits have little probative value and will be given minimal weight as evidence of the applicant's residence in the United States during the requisite period.
- An affidavit from [REDACTED] dated November 19, 2005. The affiant states that she met the applicant in 1981 at a family reunion. The affiant states that she knows that the applicant entered the United States "on or about 1980" because that is what she was told by the applicant. The affiant does not claim to have personal knowledge of the

applicant's residence during the requisite period. The affiant does not provide details regarding the frequency or nature of her contact with the applicant during the requisite period. Given these deficiencies, the affidavit has little probative value and will be given minimal weight as evidence of the applicant's residence in the United States during the requisite period.

- Affidavits from [REDACTED] both dated October 29, 2005. The affiants state that they met the applicant in 1979 at the home of the applicant's sister. The affiants do not state whether they met the applicant in Mexico or in the United States. If the affiants are claiming to have met the applicant in the United States in 1979, then this would conflict with the applicant's own testimony that she entered the United States in 1981. If the affiants are claiming to have met the applicant in Mexico, then it is not clear that they have personal knowledge of the applicant's residence in the United States during the requisite period. Further, these affidavits lack details such as the circumstances under which the affiants came to know the applicant or how they date their initial acquaintance with the applicant. Lacking such relevant detail, the affidavits can be afforded only minimal weight as evidence of the applicant's residence in the United States during the requisite period.

In summary, the applicant has not provided sufficient evidence in support of her claim of residence in the United States relating to the entire 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. Given the contradictory information in the record and the applicant's 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 for the requisite period 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.