

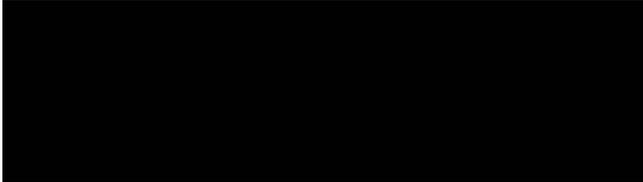
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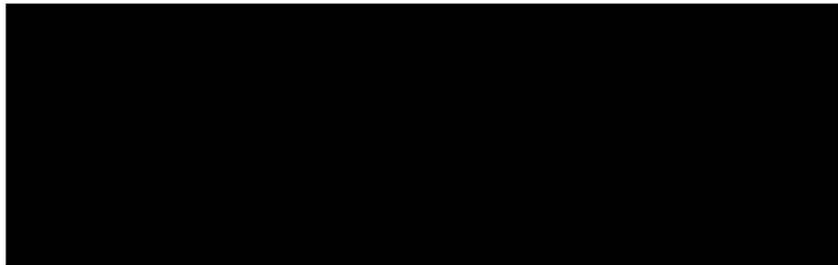
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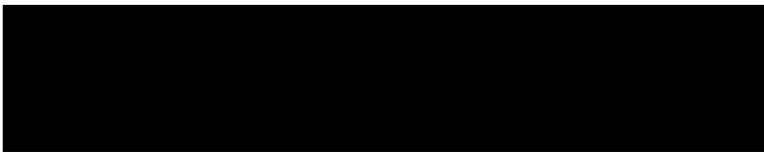
IN RE:

Applicant:



PETITION: 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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter 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.

John F. Grissom, Acting 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 Director, Houston, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined that the applicant had not demonstrated that she had 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 between May 5, 1987 to May 4, 1988. In addition, the director determined that the applicant was inadmissible to the United States pursuant to section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (Act) because the applicant did not possess a valid entry document when she attempted to enter this country on September 27, 1995 and inadmissible pursuant to section 212(a)(6)(C) of the Act for fraud or misrepresentation of a material fact arising from her attempted entry on this date. Therefore, the district director concluded that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and section 245 of the Act and denied the application.¹

On appeal, counsel reiterates the applicant's claim of residence in this country since 1981 and asserts that the affidavits submitted in support of such claim should be considered as sufficient to demonstrate her residence in the United States for the requisite period. Counsel contends that the applicant had submitted a response to the notice of intent to deny that was not acknowledged by the director in the notice of denial. Counsel provides copies of this response and corresponding supporting documents. Therefore, the applicant's response to the notice of intent to deny shall be incorporated into the appeal.

An applicant for temporary residence 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

¹ According to evidence in the record, the applicant was ordered removed on November 9, 1995 as a result of having been found inadmissible to the United States under sections 212(a)(7)(A)(i)(I) and section 212(a)(6)(C) of the Act as described above. The electronic record shows that the applicant submitted a Form I-601, Application for Waiver of Grounds of Inadmissibility, on May 31, 2002 and that the Form I-601 waiver application was subsequently denied on October 10, 2002. Consequently, the applicant remains ineligible to adjust to eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and section 245 of the Act as a result of her inadmissibility.

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) and 8 C.F.R. § 245a.2(b).

An alien 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 and 8 C.F.R. § 245a.2(b)(1).

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. Paragraph 11, page 6 of the CSS Settlement Agreement and paragraph 11, page 10 of the Newman Settlement Agreement.

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. 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 including affidavits is permitted pursuant to 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.

The regulation at 8 C.F.R. § 245a.2(d)(3)(v) states that attestations by churches, unions, or other organizations to the applicant's residence by letter must: identify applicant by name; be signed by an official (whose title is shown); show inclusive dates of membership; state the address where applicant resided during membership period; include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; establish how the author knows the applicant; and, establish the origin of the information being attested to.

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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to establish continuous residence in the United States for the period in question. 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 were asked to list all residences in the United States since first entry, the applicant indicated that she resided at [REDACTED] in Galveston, Texas from January 1981 to January 1985, [REDACTED] in Houston, Texas from January 1985 to November 1987, and [REDACTED] in Houston, Texas from November 1987 to July 1990. In addition, at part #31 of the Form I-687 application where applicants were asked to list all affiliations or associations with clubs, organizations, churches, unions, business, etc., the applicant listed an affiliation with Our Lady of Guadalupe Church in Houston, Texas from January 1981 to January 1985. Further, at part #33 of the Form I-687 application where applicants were asked to list all employment since entry, the applicant indicated that she was employed as a housekeeper by [REDACTED] from May 1981 to January 1985 at that same address in Galveston, Texas she claimed as her residence from January 1981 to January 1985 and as a babysitter by [REDACTED] from November 1987 to September 1990 at substantially that same address in Houston, Texas she claimed as her residence from November 1987 to July 1990.

In support of her claim of residence in the United States since prior to January 1, 1982, the applicant submitted photocopies of five separate envelopes with postmarks during the requisite period ranging from 1982 to 1987 that had purportedly been mailed from El Salvador to the applicant at addresses she claimed as her residences in this country. However, the probative value of these envelopes is limited in that the documents are photocopies rather than originals.

“In judging the probative value and credibility of the evidence submitted, greater weight will be given to the submission of original documentation.” 8 C.F.R. § 245a.2(d)(6).

The applicant included an affidavit signed by [REDACTED] who declared that she gave the applicant a ride to the bus station in Houston, Texas on June 18, 1987 in order for her to travel to San Salvador, El Salvador to see her sick mother. [REDACTED] noted that the applicant subsequently returned to the United States from El Salvador on July 16, 1987. While [REDACTED] attested to the applicant’s purported absence from this country in 1987, she failed to provide any detailed and verifiable testimony relating to the applicant’s residence in this country since prior to January 1, 1982.

The applicant provided affidavits of residence signed by [REDACTED] (two separate affidavits), [REDACTED], and [REDACTED] respectively. However, all of these affiants attested to the applicant’s residence in this country for only a portion of the requisite period rather than the entire requisite period. In addition, these affiants failed to put forth any specific and relevant testimony to corroborate the applicant’s residence in this country for that portion of the requisite period they had testified the applicant was residing in the United States. Moreover, [REDACTED]’s testimony that the applicant had both lived with him and worked for him at a house on [REDACTED] in Galveston, Texas from May 1981 to the end of 1985 directly contradicted the applicant’s testimony that she resided and worked at [REDACTED] in Galveston, Texas from January 1981 to January 1985 at parts #30 and #33 of the Form I-687 application.

The applicant submitted an undated employment declaration signed by [REDACTED] who listed her address as [REDACTED] in Houston, Texas as her address of residence. [REDACTED] stated that she had known the applicant since about 1987 when the applicant began babysitting her children. [REDACTED] that the applicant worked as a babysitter for her on a part-time as needed basis from November 6, 1987 to September 1990. [REDACTED] also provided two separate letters dated January 2, 2001 and December 1, 2006 in which she claimed to have known the applicant since 1981. However, [REDACTED] failed to note in either the employment declaration or her two subsequent letters that the applicant lived with her during that period she employed the applicant as a babysitter despite the fact that the applicant claimed that she resided at [REDACTED] in Houston, Texas from November 1987 to July 1990 at part #30 of the Form I-687 application. In addition, [REDACTED] failed to provide any explanation as why she claimed to have known the applicant since 1987 in the employment declaration but then provided conflicting and revised testimony in her two subsequent letters that she had known the applicant since 1981.

The applicant included an affidavit dated November 10, 1997 and a letter dated December 5, 2006, both of which are signed by [REDACTED]. In the affidavit dated November 10, 1997, [REDACTED] asserted that she was an acquaintance of the applicant with personal knowledge the applicant resided in Houston, Texas since 1981. [REDACTED] subsequently reiterated her testimony that the applicant lived in Houston, Texas since 1981 in her letter of

December 5, 2006. Nevertheless, [REDACTED]' testimony that the applicant lived in Houston, Texas since 1981 directly contradicted the applicant's testimony own at part #30 of the Form I-687 application that she resided in Galveston, Texas January 1981 to January 1985 and then subsequently moved to Houston, Texas.

The applicant provided a letter containing the letterhead of Our Lady of Guadalupe Church in Galveston, Texas that is signed by [REDACTED] who listed her position as Director of Hispanic Ministry. Sister Kathleen noted that the applicant had lived at that same address in Galveston, Texas from January 1981 to January 1985 as the applicant had listed as her address of residence for the same period at part #30 of the Form I-687 application. [REDACTED] noted that the applicant attended [REDACTED] in Galveston, Texas (originally located at [REDACTED] and [REDACTED] with a subsequent move to [REDACTED]) at she was present at the formal opening of the church at its new location on December 12, 1984. However as noted above, the applicant listed an affiliation with Our Lady of Guadalupe Church in Houston, Texas from January 1981 to January 1985 at part #31 of the Form I-687 application, without giving any indication that she had been associated with Reina De La Paz Church in Galveston, Texas during this period.

The applicant submitted two affidavits each from [REDACTED] and [REDACTED] respectively. Although [REDACTED] and [REDACTED] both attested to the applicant's residence in the United States for the entire requisite period since 1981, neither affiant provided detailed and verifiable information to substantiate the applicant's claim of residence in this country for the period in question.

On appeal, the applicant provides copies of previously submitted documentation as well as new documents in support of her appeal. Counsel's statements on appeal relating to the sufficiency of evidence submitted by the applicant in support of her claim of continuous residence in this country since prior to January 1, 1982 are noted. However, the affidavits, declarations, and letters in the record lack detail and specific verifiable information to corroborate the applicant's claim of residence in the United States for the requisite period and in some cases contain testimony that contradicts key portions of the applicant's own testimony regarding her residence for the period in question.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

The absence of sufficiently detailed supporting documentation and the existence of conflicting testimony that contradicts critical elements of the applicant's claim of residence seriously undermines the credibility of the supporting documents, as well as the credibility of the

applicant's claim of residence in this country for the requisite period. Pursuant to 8 C.F.R. § 245a.2(d)(3), 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 submit sufficient credible documentation to meet her burden of proof in establishing that she has resided in the United States since prior to January 1, 1982 by a preponderance of the evidence as required under both 8 C.F.R. § 245a.2(d)(3) and *Matter of E- M-*, 20 I&N Dec. 77 (Comm. 1989).

Given the applicant's reliance upon supporting documents with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 as required under section 245A(a)(2) of the Act. 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.