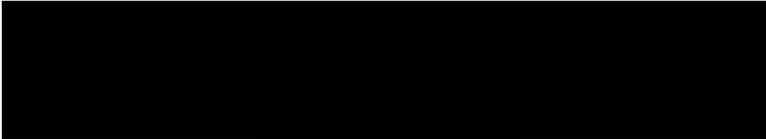


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and Immigration
Services**

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FILE: [REDACTED]
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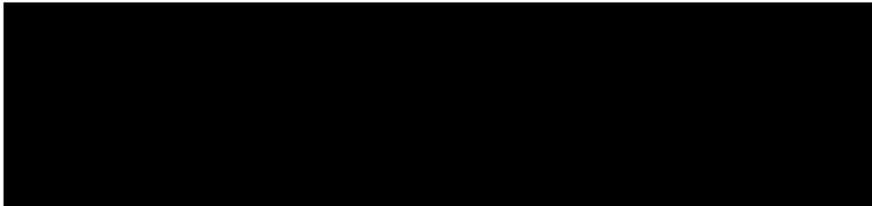
Office: NEW YORK

Date: FEB 26 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:



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, New York. 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 September 8, 2005 (together, the I-687 Application). 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 noting that the numerous affidavits submitted were "neither credible nor amenable to verification, as well as lacking severely in probative value." The director denied the application as 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.

The director's decision also noted that the applicant had failed to provide any tangible evidence or credible documentation in support of her claim, such as receipts, medical invoices, school records, utility bills, birth certificates, social security records, pay stubs or other such documentation issued during the statutory time frame. The director also noted that the applicant, who had provided proof of entry on a B-2 visa in 1988, must have lied to the overseas consular officer to obtain the visa and that her testimony and other evidence were therefore not credible. The director also found it "highly unlikely" that the applicant decided to wait to apply for temporary residence until after her 1988 entry to the United States in light of the fact that her close friend, with whom the applicant claimed to have resided for many years in the United States, successfully applied for temporary residence in a timely fashion.

On appeal, the applicant asserts that the affidavits she submitted are sufficient to support her I-687 Application; that all the affiants included contact information in the form of a telephone number or address, regardless of the immigration officer's lack of success in contacting them; that the immigration officer applied an excessively strict standard of proof and inappropriately speculated about the significance of the actions of the applicant's friend who applied for temporary residence. She did not submit any additional documentation.

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).

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. 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.2(d)(6).

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). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The credibility of an affidavit may be assessed by taking into account such factors as whether the affiant provided some proof that he or she was present in the United States during the requisite period. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

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 AAO notes that, as a class member under the CSS/Newman Settlement Agreements, the applicant is not required to prove entry and residence in the United States with contemporaneous documents from the relevant time period; that portion of the director's decision regarding a requirement for such "tangible evidence" was erroneous. The director also erroneously concluded that because the applicant lied about her prior unlawful residence in the United States in order to get a visitor's visa in 1988, "it is impossible to lend any credibility to any of the testimony or documentation [she] provided in support of [her] claim." 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. The director's blanket finding of lack of credibility is therefore not valid. Moreover, an applicant for temporary residence is not ineligible for having re-entered the United States with a valid visa in order to return to "an unrelinquished unlawful residence." 8 C.F.R. § 245a.2(b)(9). In this case, although the applicant would be inadmissible under section 212(a)(6)(C) of the Act, 8 U.S.C. § 1182(a)(6)(C), for having obtained a visa for entry to the United States through fraud or misrepresentation, a discretionary waiver of inadmissibility is available "for humanitarian purposes, to assure family unity or when it is otherwise in the public interest." Section 245A(d)(2)(B)(i) of the Act; 8 U.S.C. § 1255a(d)(2)(B)(i); 8 C.F.R. § 245a.2(b)(9). The AAO also finds that the applicant was correct in objecting to the director's reliance on supposition regarding the relevance of the applicant's failure to file for legalization in the same manner that her friend did. Despite these errors, however, upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director's conclusion that the applicant has not established by a preponderance of the evidence that she is eligible for the benefit sought.¹

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that she entered before 1982 and resided in the United States for the requisite period. The applicant has provided numerous affidavits, receipts, letters from individuals claiming to be former landlords or employers, several undated photographs, and her own testimony in the form of statements and prior applications. The record includes the pending I-687 Application as well as a prior Form I-687, dated January 2, 1990, which was submitted in support of the applicant's class member application in a legalization class-action lawsuit.

Some of the evidence submitted is either undated or indicates that the applicant resided in the United States after her entry on a B2 Visa in April 1988 and is not probative of residence before that date. The following evidence relates to the requisite period:

- Four statements from [REDACTED], three of which are affidavits dated November 30, 1989, and the fourth a letter dated July 15, 2005. The 1989 affidavits are duplicate "Landlord Letter" forms indicating that the applicant was a tenant at three separate addresses and times, and that [REDACTED] was the landlord at those addresses; [REDACTED] provided her current address in all three affidavits.

¹ 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 2005 letter "To whom It May Concern" repeats the addresses and dates provided in the 1989 forms, indicating that the applicant shared an apartment with [REDACTED] at three separate addresses: from October 1981 to December 1983 at [REDACTED] in Elmhurst, New York; from April to December 1988 at [REDACTED] in Corona, New York; and from January to November 1989 at [REDACTED] in Jackson Heights, New York. [REDACTED] included her address and telephone number and stated that during those time periods she was the "sub-landlord" for those addresses and the applicant paid monthly rent to her. The director noted in her decision that "a review of [REDACTED] records reveals that she applied for amnesty during the requisite time frame." [REDACTED] s Naturalization Certificate, included in the record, shows that she became a U.S. citizen in January 1999. The evidence suggests that [REDACTED] e was in the United States for the requisite time period, and her statements regarding the dates and places of residence are consistent with the applicant's listed addresses on her I-687 Application and her 1990 Form I-687. These affidavits lack any details, however, that would lend credibility to the statements, and there is no evidence in the record that the affiant resided at the addresses listed as claimed. They, thus, have minimal weight as evidence of the applicant's residence at the noted address from 1981 through 1983.

- An additional duplicate "Landlord Letter" form, notarized and dated December 1, 1989, from [REDACTED] indicating that the applicant was a tenant at [REDACTED] Jackson Heights, New York from January 1, 1984 to March 8, 1988 and that [REDACTED] was the landlord at that address. As with the above forms, the information is consistent with information provided by the applicant on her I-687 Application and 1990 Form I-687, but no details are included, and the form has minimal weight as evidence of the applicant's residence at the noted address from 1984 to 1988.
- Four letters from friends attesting to the applicant's good character and claiming a relationship with the applicant in the United States since either 1981, 1983 or 1984. They all list their addresses and provide their telephone numbers. The first is a letter dated February 26, 2006 from [REDACTED]. She states that she met the applicant in December 1983 at a Christmas party at [REDACTED] s house, and that the applicant was the guest of a mutual friend, [REDACTED]. The letter is not notarized but is accompanied by a copy of [REDACTED] s U.S. Passport data pages. The second is a notarized letter from [REDACTED], dated June 8, 2005, certifying that the applicant has resided in the United States for almost 24 years and that she met her at a Thanksgiving Day celebration in November 1981 at a friend's house and that they have known each other since they were children in Colombia. The third is a notarized letter dated July 26, 2006 from [REDACTED]. She states that she has known the applicant since 1983 and they met at St. Sebastian Church where they were active members. The fourth is a notarized letter from [REDACTED], dated July 19, 2005, stating that she met the applicant in Queens, New York in the summer of 1984 and they have been close friends since then. Not one of these friends indicates where or when either they or the applicant resided in the United States during the requisite period. They also fail to provide details regarding their claimed relationship with the applicant for over 20 years that would lend credibility to their statements. These letters therefore have minimal weight as evidence of the applicant's residence in the United States during the requisite period.

- Five duplicate “Affidavit of Witness” forms, dated in December 1989. Four of the forms, signed by [REDACTED] and [REDACTED] list the applicant’s four different addresses in New York from October 1981 through November 1989; and the fifth, signed by [REDACTED] lists four addresses from 1984 through 1989, all consistent with the applicant’s information on her I-687 Application. The form language states that the affiant has personal knowledge that the applicant has resided in the United States at the addresses listed. The form allows the affiant also to fill in a statement that he or she “is able to determine the date of the beginning of his/her acquaintance with the applicant in the United States from the following fact(s): _____.” [REDACTED] added “I met [the applicant] through a Christmas party, over her [sic] best girlfriend’s, [REDACTED], house. (12-24-[indcipherable year])”; [REDACTED] added no information; [REDACTED] added “I met [the applicant] through a New Year party” with no time or place noted; [REDACTED] added “we’re introduced by a common friend,” with no time or place noted; [REDACTED] added “met at a party,” with no time or place noted. These affidavits, prepared on duplicate fill-in-the-blank forms, contain no details regarding any relationship with the applicant during the requisite period and fail to even state when or where the affiants and the applicant met. Although four of the five affiants include the applicant’s 1981 address, they fail to indicate any personal knowledge of the applicant’s claimed entry to the United States during that year or of the circumstances of her residence other than her addresses. There is no evidence that the affiants resided in the United States during the requisite period and no details of any relationship that would lend credibility to their statements.
- A form letter on letterhead of the Church of St. Sebastian in Woodside, New York, dated December 5, 1989 and signed by “Rev. [illegible] [REDACTED]”. The applicant’s name and current address are inserted in the blanks as appropriate, and the letter states that the applicant “appeared before me on this day and swore that she has lived in the United States since 30 October, 1981 [and she] swears that she has attended religious services in our church since she has resided in Woodside, New York.” The letter is not notarized. While consistent with the applicant’s description of her affiliations or associations on her I-687 Application, the applicant failed to list any such association on her 1990 Form I-687. Moreover the letter fails to conform to regulatory guidelines in that it does not state the address where the applicant resided during the membership period; establish how the author knows the applicant, other than that she “appeared before him” on December 5, 1989; or state the origin of the information provided, other than that it was provided by the applicant herself. See 8 C.F.R. § 245a.2(d)(3)(v). Moreover, the applicant did not include a Woodside address in her list of residences on any of the forms she submitted. The letter has no probative value for these reasons.
- Two notarized letters, dated in November and December 1989 respectively, attesting to the applicant’s prior employment. [REDACTED], certifies that the applicant was “in charge of the Cleaning Department of this Center” from December 10, 1981 to October 31, 1986. The affiant signs as Doctor at a dental office in New York City. [REDACTED] certifies that the applicant has worked as a bookkeeper at Restaurant La Brasa in Jackson Heights, New York, since December 26, 1981. He signs as the owner of the restaurant. The affiants confirm the information provided by the applicant on her I-687 Application and 1990 Form I-687 regarding dates and places of employment. By regulation, letters from employers should be on employer letterhead stationery if

available and must include the applicant's address at the time of employment, exact period of employment and layoffs, duties with the company; whether the information was taken from official company records; and where records are located and whether U.S. Citizenship and Immigration Services (CIS) may have access to the records; if records are unavailable, an affidavit explaining this shall also state the employer's willingness to come forward and give testimony if requested. 8 C.F.R. § 245a.2(d)(3)(i). Neither affidavit meets these regulatory standards. They are not on letterhead and do not provide the applicant's address; the affiants do not offer to either produce official company records or to testify regarding unavailable records. There is no official indication that the "doctor" or "owner" is connected to the relevant business; there are no telephone numbers included for verification of the information. These letters can be accorded only minimal weight as evidence of residence during the requisite period.

- Several receipts made out to the applicant for purchases made in New York City or Jackson Heights during the requisite period, dated in October 1987, March 1987, March 1986, May 1985, October 1982, and December 1981. Although the applicant's name is written on these receipts, no address is included on any of them, and, while a receipt for purchases may indicate presence in the United States on the date issued, it has minimal weight as evidence of residence.

For the reasons noted above, the documents submitted in support of the applicant's claim have been found to lack credibility or to have minimal probative value as evidence of the applicant's residence and presence in the United States for the requisite period. Although the applicant has submitted numerous letters and form affidavits, they all lack sufficient detail to be found credible or probative. Regarding the applicant's claimed entry into the United States before January 1, 1982, other than one receipt for a purchase made in December 1981, without any indication of the applicant's address, there is no statement by anyone who claims to have personal knowledge of such entry. Employer letters and the one letter from a church fail to meet regulatory standards. The duplicative language, use of forms and the failure to meet statutory standards also detract from the probative value of the affidavits.

The remaining evidence in the record is comprised of the applicant's statements and application forms, in which she claims to have entered the United States on October 30, 1981 near San Isidro and to have resided for the duration of the requisite period in New York. As noted above, to meet her burden of proof, the applicant must provide evidence of eligibility apart from her own testimony. In this case, her assertions regarding her entry are not supported by any credible evidence in the record; the record indicates that the applicant entered the United States with a valid visa in April 1988, but the evidence submitted does not support a conclusion that she resided in the United States before then.

The absence of sufficient credible and probative documentation to corroborate the applicant's claim of continuous residence for the 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. Given the lack of credible supporting documentation, it is concluded that the applicant has failed to establish by a preponderance of the evidence that she has continuously resided in an unlawful status in the United States for the requisite period,

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.