

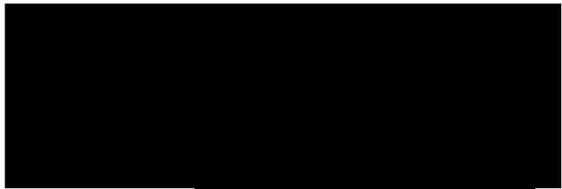
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U.S. Department of Homeland Security
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U.S. Citizenship
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Services

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FILE: [REDACTED]
MSC 05 245 10949

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:

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.

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 June 2, 2005. 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. 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.

On appeal, the applicant states that the district director should have been sympathetic to her "helpless situation" and approved her application. She states that she timely filed a response to the director's notice of intent to deny, and explained that all of her affiants were in the United States during the requisite period and had direct, personal knowledge of her continuous residence. The applicant submits a short statement, but no new evidence, in support of the appeal.

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 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).

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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his or her burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to Citizenship and Immigration Services (CIS) on June 2, 2005. The applicant signed this application under penalty of perjury, certifying that the information is true and correct. 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 showed that she resided at [REDACTED] Brooklyn, New York from November 1981 until July 1986, and at [REDACTED] in Brooklyn, New York from August 1986 until December 1993. The applicant's residence information indicates that she continuously resided in the United States during the requisite period; however, the applicant has failed to corroborate this testimony with credible and probative evidence.

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). To meet her burden of proof, an applicant must provide evidence of eligibility apart from her own testimony. 8 C.F.R. § 245a.2(d)(6). The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that an applicant may submit to establish proof of continuous residence in the United States during the requisite period. This list includes: 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. The applicant failed to provide any of these documents in support of her claim of continuous residence in the United States.

An applicant may also submit any other relevant document pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L). The applicant submitted an affidavit in support of her application. She stated that she initially entered the United States on November 21, 1981 with a visa and that she has been residing in the United States in an unlawful status since that time, with one absence from August 30, 1987 until October 12, 1987.

The applicant also submitted the following evidence in support of his application:

- A copy of an affidavit from [REDACTED], who states that he has known the applicant since December 1982, that she entered the United States with her parents before January 1, 1982, and that she has been in the United States continuously except for a short absence. He states that the applicant's parents made several attempts to apply for legalization. Here, the applicant does not state how he knows the applicant entered the United States prior to January 1, 1982 if he did not in fact meet her until December 1982. He does not indicate how or where he met the applicant or how frequently he saw her during the requisite period. [REDACTED] failed to provide any relevant, verifiable details regarding the events and circumstances of the applicant's residence in the United States that would demonstrate that he has direct personal knowledge of the events to which he is attesting, or a telephone number where he could be readily contacted for verification. For these reasons, this affidavit is lacking in probative value.
- A copy of an affidavit from [REDACTED] who states that he has known the applicant since 1981, that she entered the United States prior to January 1, 1982, and that she was continuously physically present in the United States except for a brief absence. He states that the applicant attempted to file a legalization application between May 5, 1987 and May 4, 1988. [REDACTED] also indicates that he has "personal knowledge regarding this matter." He did not provide a contact telephone number, so his statement cannot be readily verified. Although the affiant attested to events occurring between 1987 and 1988, the affidavit bears a notary stamp indicating that the document was signed on November 10, 1987, thus raising questions regarding the authenticity of the notary stamp and the credibility of the evidence. [REDACTED] also fails to indicate how or where he met the applicant, what his relationship with her is, or how frequently he saw her during the requisite period, and he did not provide any relevant, verifiable details regarding the applicant's residence that would lend credibility to his claim that he has "personal knowledge" regarding the events to which he is attesting. For these reasons, this affidavit can be given only minimal weight as corroborative evidence.
- An affidavit from [REDACTED], who states that she has known the applicant since 1981, and indicates that the applicant sometimes worked for her between 1985 and 1988. She states that the applicant attempted to file her legalization application during the original legalization application period and made several attempts thereafter, and that she has "personal knowledge about this matter." [REDACTED]'s testimony that she employed the applicant between 1985 and 1988 is not credible, given that the applicant was between the ages of 8 and 11 years old during this period. She does not indicate how or where she met the applicant or provide any other details to lend credibility to her claim that she has personal knowledge of the events and circumstances of the applicant's residence in the United States. Nor did she provide a telephone number where she

could be readily contacted to verify her testimony. For these reasons, this affidavit is lacking in credibility and probative value.

- An affidavit from [REDACTED], who states that the applicant is well known to him since 1984. He states that the applicant entered the United States after January 1, 1982 with her parents and has been residing continuously in an unlawful manner except for a brief absence. Mr. [REDACTED] indicates that he went with the application's parents when they attempted to file their legalization applications during the original legalization application period. Here, the applicant states that he first met the applicant in 1984, so it is unclear on what basis he can provide information regarding her residence in the United States prior to that date. Nevertheless, he states that the applicant entered the United States after January 1, 1982, which is inconsistent with the applicant's claim that she first entered the United States in 1981. He does not indicate where or how he first met the applicant, indicate how frequently he had contact with her during the requisite period, or provide any other verifiable information, such as the names of her parents, or the address at which she lived during the requisite period, that would lend credibility to his claim that he has personal knowledge of the applicant's residence in the United States. For these reasons, this affidavit can be given only minimal weight as corroborative evidence of the applicant's residence in the United States subsequent to 1984.
- An affidavit from [REDACTED], who states that he met the applicant in December 1981 at a "Community Function" held in Brooklyn, New York, and that since that time, "she always used to call me and told about her all efforts and endeavors in her legalization matter." He further provides information regarding the applicant's dates and addresses of residence in the United States and regarding her dates of absence from the United States. This information is consistent with what the applicant indicated on her Form I-687. However, it is noted that the applicant was four years old when the applicant claims to have met her in 1981, and was only 10 years old when **the original legalization period ended.** [REDACTED]'s testimony that the applicant used to call him to talk about her efforts to apply for legalization are not credible given that the applicant was a young child during the requisite period. Therefore, this affidavit is lacking in probative value.

The applicant also submitted a photocopy of a Form I-687 that was ostensibly signed by her on November 12, 1987, and an Affidavit for Determination of Class Membership In League of United Latin American Citizens v. INS (LULAC), ostensibly signed on May 16, 1991. The signature on both documents appears to match the applicant's signature on her current Form I-687. However, it is implausible that the applicant completed and signed the above-referenced documents at the ages of nine and 13, respectively. If the applicant did in fact previously file or attempt to file these documents, these are clearly not true copies of such documents.

The applicant was interviewed under oath by a CIS officer on March 6, 2006, but submitted no additional documentary evidence at that time. On that date, the director issued a Notice of Intent to Deny (NOID), advising the applicant that she had not established eligibility for the benefit sought. The director noted that the applicant testified that she entered the United States on November 21, 1981 with a visitor visa. The director observed that if the applicant entered with a visitor visa, she was in the United States legally

and noted that she had submitted no evidence to show that she was in the United States unlawfully on January 1, 1982.

The director advised the applicant that the affidavits submitted were neither credible, amenable to verification, nor corroborated by any other evidence in the record. The director noted that there was no proof that any of the affiants had direct personal knowledge of the events and circumstances of her entry and residence, or proof that the affiants were in fact present in the United States during the requisite period. The director afforded the applicant 30 days in which to submit additional evidence addressing the deficiencies noted.

In response to the NOID, the applicant submitted an affidavit dated March 17, 2006, in which she reiterated her claim that she entered the United States prior to January 1, 1982. She stated that all documentation regarding her entry and continuous residence were lost years ago while moving houses. The applicant indicated that all the affiants who provided affidavits on her behalf were physically present in the United States during the statutory period. The applicant offered no additional corroborating evidence and did not otherwise address the deficiencies discussed in the NOID.

The director denied the application on July 24, 2006. In denying the application, the director determined that the applicant failed to submit credible documents that would demonstrate by a preponderance of the evidence that she continually resided in the United States in an unlawful status during the requisite period. The director further found that the applicant had failed to address the deficiencies discussed in the Notice of Intent to Deny. Therefore, the director concluded that the applicant had failed to overcome the reasons detailed in the notice of intent to deny.

It is noted that the district director incorrectly applied the regulation at 8 C.F.R. § 103.2(b) in evaluating the instant application and supporting evidence. Nevertheless, the district director's actions must be considered to be harmless error as the AAO conducts a de novo review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(d)(6).

On appeal, the applicant reiterates that "the affiants were present in the United States during the statutory period and they had direct personal knowledge of the events and circumstances of my entry and residence in the United States." She submits a statement that is very similar to the affidavit submitted in response to the NOID, but provides no additional evidence in support of her claim of continuous residence during the requisite period.

The beneficiary's unsupported statement does not cure the myriad deficiencies of the affidavits submitted in support of this application. As discussed above, there is nothing in any of the affidavits to suggest that the affiants have a bona fide relationship with the applicant or any personal knowledge of the events and circumstances of her residence in the United States during the requisite period. The applicant was specifically notified of these deficiencies and has offered nothing other than her own assertions in rebuttal.

An application which is lacking in contemporaneous documentation cannot be deemed approvable if the entire period of claimed continuous residence relies solely on affidavits which are considerably lacking in credibility and probative value. Three of the affiants simply stated, in a conclusory manner, that they have known the applicant since 1981 and have personal knowledge of her residence in the United States, while the remaining two affiant claimed to meet the applicant in 1982 and 1984, respectively. None of the affiants provided any details regarding the nature of their relationship with the applicant, the frequency and circumstances of their contacts with the applicant during the requisite period, the events and circumstances surrounding the applicant's residence in the United States, the specific address or addresses at which the applicant resided, or any other details that would lend credibility to their claims of having "personal knowledge" of the applicant's life in the United States. None of the affiants provided a contact telephone number at which they could be reached for verification. None of the applicants provided any evidence of their relationship with the applicant, and, although not required, none of the affiants provided any proof that they themselves were in the United States during the requisite period, or any identifying documents.

As is stated above, 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). The applicant has been given the opportunity to satisfy his burden of proof with a broad range of evidence pursuant to 8 C.F.R. § 245a.2(d)(3). However, this applicant has not provided any contemporaneous evidence of residence in the United States relating to the requisite period. While she has submitted five attestations from affiants concerning that period, none of them are credible, probative or amenable to verification. As such, she cannot meet either the necessary continuous residency or continuous physical presence requirements for legalization pursuant to section 245A of the Act. These affidavits are not sufficient to satisfy the applicant's burden of proof.

The absence of sufficiently detailed, credible 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 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 from prior to January 1, 1982 through the date he 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.

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