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[REDACTED]

FILE: [REDACTED] MSC-05-090-10147

Office: LOS ANGELES

Date: **JAN 02 2008**

IN RE: Applicant: [REDACTED]

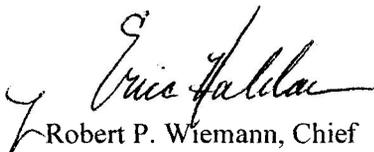
APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

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, 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 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, the director noted that at the time of the applicant's interview with a Citizenship and Immigration Services (CIS) officer, the applicant stated that she first entered the United States on January 8, 1982. The director further noted that the applicant submitted a sworn, signed statement that confirmed this as her date of first entry into the United States. The director went on to say that though the applicant submitted affidavits from two (2) individuals, [REDACTED] and [REDACTED], who claimed to have knowledge that the applicant resided in the United States before January 1, 1982, they did not submit evidence that they themselves were present in the United States before that date. The director denied the application, finding 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 first entered the United States in June 1981 and resided continuously in the United States since that time. She states that her previously submitted declarations are credible. She goes on to say that the affiants who submitted them know that she has resided in the United States since 1981. The applicant submits updated affidavits and proof that the affiants resided in the United States before January 1, 1982. She states that she will submit a brief within thirty (30) days. It is noted that there is no brief in the record.

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 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).

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.* 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 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.

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 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 29, 2004. 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 her addresses in the United States during the requisite period to be: [REDACTED] in Calexico, California where she lived from June 1981 until October 1987. It is noted that the record shows the CIS officer who interviewed the applicant amended the applicant's Form I-687 to show that the applicant began living at that residence on January 8, 1982. It is also noted that the applicant did not show an address of residence in the United States from October 1987 until January 1989 on her Form I-687. At part #32 of her application, where the applicant was asked to list all of her absences from the United States since she first entered, she indicated that she was absent on three occasions during the requisite period as follows: from June to July 1983; from May to June 1985; and from November 1987 until February 1989. At part #33, where the applicant was asked to list all of her employment in the United States since she first entered, she showed her employment in the United States during the requisite period to be for [REDACTED], a farm labor contractor, as a field worker from June 1981 until November 1987.

At her interview with a CIS officer on July 6, 2005, the applicant stated that she first entered the United States on January 8, 1982. The record contains a sworn statement signed by the applicant on the date of her interview which indicates that the applicant first entered the United States in Calexico, California on January 8, 1982 when she was seventeen (17) years old.

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. An applicant may also submit any other relevant document pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided the following documentation that is relevant to the requisite period:

- A letter from [REDACTED], the former general manager of [REDACTED] Farm Labor Contractor, dated December 10, 2004. Here, [REDACTED] states that the applicant worked for him from January 1982 until April 1986. He goes on to say that the company ceased operating in September 1987. It is noted that the applicant indicated on her Form I-687 that she worked for [REDACTED] from June 1981 rather than from January 1982. She also showed that her work continued until November 1987, two (2) months after [REDACTED] indicates the company ceased operating. [REDACTED] goes on to say that his company does not have proper employment records for employees and that information regarding dates of employment is based only on his personal knowledge. The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states, in pertinent part that letters from employers should be on the employer letterhead stationary, if the employer has such stationary and must include the following: an applicant's address at the time of employment; the exact period of employment; periods of layoff; duties with the company; whether or not the information was taken from the official company records; and where records are located and whether the Service may have access to the records. The regulation further provides that if such records are unavailable, an affidavit form-letter stating that the alien's employment records are unavailable and noting why such records are unavailable may be accepted in lieu of statements regarding whether the information was taken from the official company records and an explanation of where the records are located and whether USCIS may have access to those records. This affidavit form-letter shall be signed, attested to by the employer under penalty of perjury, and shall state the employer's willingness to come forward and give testimony if requested. Here, [REDACTED]'s letter does not indicate whether there were periods of layoff during the applicant's employment and he does not include an affidavit form-letter. Because this employment verification letter is not consistent with what the applicant showed on her Form I-687 regarding her dates of employment with [REDACTED], doubt is cast on whether the applicant has accurately represented her dates of employment with this company. Because this letter is lacking in detail, very minimal weight can be afforded to this letter as evidence that the applicant resided in the United States during the requisite period.

Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

On January 17, 2006, the director issued a Notice of Intent to Deny (NOID) in which she stated that the evidence submitted by the applicant, including the sworn statement she signed on the date of her interview with the CIS officer stating that she first entered the United States on January 8, 1982, caused her to fail to meet her burden of establishing that she entered the United States before January 1, 1982 and then continuously resided in the United States since that time and for the duration of the requisite period. The director granted the applicant thirty (30) days within which to submit additional evidence in support of her application.

In response to the director's NOID, the applicant submitted the following additional evidence:

- An affidavit from [REDACTED] dated January 27, 2006. In this affidavit, the affiant states that the applicant lived in her house at [REDACTED], in Los Angeles from June 1981 until January 1982. Here, [REDACTED] fails to indicate where she met the applicant, the nature of their relationship or how she can verify the dates the applicant lived with her. She does not indicate whether there were periods of time that she did not see the applicant while she was living with her. She fails to submit proof of her identity with her affidavit and further fails to submit documents that prove that she herself resided in the United States during the requisite period. It is further noted that the applicant did not show the affiant's address of residence as an address at which she lived at any point in time. Because this affidavit is significantly lacking in detail and because it does not provide testimony that is consistent with what the applicant showed on her Form I-687 regarding her addresses of residence in the United States, very little weight can be afforded to this affidavit in establishing that the applicant entered the United States on a date prior to January 1, 1982. Further, as this affidavit does not establish that the affiant had contact with the applicant from January 1982 until the end of the requisite period, it carries no weight in establishing that the applicant resided continuously in the United States for the duration of the requisite period.
- An affidavit from [REDACTED] dated January 30, 2006. Here, the affiant states that she has known the applicant since October 1981 when she met the applicant at [REDACTED] in Los Angeles at a party demonstration. She goes on to say that she has kept in touch with the applicant since that time. Here, the affiant fails to indicate how frequently she has contact with the applicant, what the nature of their contact is or whether there were periods of time during the requisite period during which she did not see the applicant. She fails to submit proof of her identity with her affidavit and further fails to submit documents that prove that she herself resided in the United States during the requisite period. She further lists the address in [REDACTED] in Los Angeles as the applicant's address of residence at the time she met the applicant. However, this is not an address at which the applicant indicated that she resided at on her Form I-687. As this affidavit is significantly lacking in detail and as it states that the applicant resided at an address of residence that the applicant has not previously indicated she resided at, it carries very minimal weight in establishing that the applicant continuously resided in the United States for the duration of the requisite period.

Thus, on the application, which the applicant signed under penalty of perjury, she showed that she resided in Calexico and worked for [REDACTED] in the United States since June 1981. However, she submitted a letter from the general manager of [REDACTED] that showed dates of employment that were not consistent with what she showed on her application. She stated in her interview with a CIS officer that she did not actually enter the United States until January 8, 1982. She then submitted documents stating that she lived in Los Angeles prior to that date.

In denying the application, the director noted the additional evidence submitted by the applicant in response to her NOID. However, she stated that the affiants from whom the applicant submitted affidavits did not offer proof that they themselves resided in the United States during the requisite period. She went on to note that the applicant did not address the fact that she testified and then signed a sworn statement in which she asserted that she had not entered the United States until January 8, 1982.

On appeal, the applicant asserts that she first entered the United States in June 1981 and that she resided continuously in the United States since that time. She states that the declarations previously submitted are credible and goes on to say that both affiants who submitted them know the applicant has resided in the United States since 1981. The applicant submits new and updated affidavits in support of her application. She states that she will submit a brief within thirty (30) days. It is noted that there is no brief in the record. Details regarding documents submitted by the applicant with her appeal are as follows:

- An affidavit from [REDACTED] dated August 21, 2006. In this affidavit, the affiant states that she knows that the applicant has resided in Los Angeles, California from 1981 until the date the affiant signed this affidavit. The affiant goes on to say that the applicant lived with her from 1981 until January 1982 at [REDACTED] in Los Angeles. Though not required to do so, she submits a photocopy of her certificate of naturalization, issued on September 24, 1999, as proof of her identity. Here, the affiant fails to offer proof that she herself resided in the United States during the requisite period. She does not indicate how she met the applicant, or whether this meeting was in the United States. She does not submit proof that she herself lived at [REDACTED] in Los Angeles in 1981. She does not indicate whether there were periods of time in 1981 when she did not see the applicant nor does she state the frequency with which she saw the applicant during the requisite period. It is again noted that the applicant did not indicate that she lived in Los Angeles in 1981 or show that she has ever resided on [REDACTED]. Because this affidavit is significantly lacking in detail it carries little weight in establishing that the applicant entered the United States before January 1, 1982. Because the affiant does not state that she had contact with the applicant for the duration of the requisite period or establish that she herself was present in the United States for the duration of that time, this affidavit carries very minimal weight in establishing that the applicant resided in the United States for the duration of that time.
- The applicant resubmits the affidavit from [REDACTED] that is dated January 27, 2006. In addition to the affidavit, the applicant also submits a photocopy of the affiant's driver's license as proof of her identity and photocopies of immunization records for [REDACTED] and [REDACTED] that show that these children were immunized in Los Angeles in 1979, 1980 and 1982. Though this additional evidence shows the affiant's identity and establishes that the affiant's children were in the United States prior to 1982, the affidavit submitted by this affidavit continues to contain testimony regarding the applicant's address of residence that is not consistent with what the applicant showed on her Form I-687. Because of this inconsistency, this affidavit carries very minimal weight in establishing that the applicant resided in the United States prior to January 1, 1982. Because the affiant does not indicate that she personally knows that the applicant resided in the United States after January 1, 1982, this affidavit carries no weight in establishing that the applicant resided in the United States for the duration of the requisite period.
- An affidavit from [REDACTED] that contains the same testimony as that which is in her previously submitted affidavit but is now dated August 21, 2006. With the affidavit, [REDACTED] has submitted a photocopy of a bank statement. Here, [REDACTED] has continued to

fail to submit identity documents or proof that she herself resided in the United States during the requisite period. As this affidavit contains the same testimony as that which was previously submitted by this affiant, it continues to be significantly lacking in detail. It continues to state that the applicant resided at an address of residence that the applicant has not previously indicated she resided at. As such, it carries very minimal weight in establishing that the applicant continuously resided in the United States for the duration of the requisite period.

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. at 79-80. The applicant has been given the opportunity to satisfy her burden of proof with a broad range of evidence pursuant to 8 C.F.R. § 245a.2(d)(3). However, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the requisite period. She has submitted proof that one affiant from whom she submitted an affidavit was present in the United States during the requisite period and has also now submitted identity documents from two (2) of the three (3) affiants from whom she submitted affidavits. However, as was previously noted, all three (3) affidavits as well as the employment letter submitted by the applicant in support of her application contain testimony that is not consistent with the applicant’s Form I-687 regarding her address of residence during the requisite period and her dates of employment during that time. The applicant has not submitted any documentation or a statement that overcomes her having submitted a signed, sworn statement to CIS in which she stated that she first entered the United States on January 8, 1982.

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 applicant’s contradictory statements made to CIS regarding her dates of residence in the United States and her reliance upon documents that are not consistent with what she showed on her Form I-687, 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.