



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE: [Redacted]
MSC-05-342-12172

Office: CHICAGO

Date: JAN 18 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.

A handwritten signature in black ink, appearing to read "D. King" or similar, with a large flourish at the end.

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, Chicago, Illinois. 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 failed to establish that she had entered the United States before January 1, 1982; had resided continuously in the United States in an unlawful status since that date through May 4, 1988; and was continuously physically present in the United States during the period beginning on November 6, 1986, and ending on May 4, 1988. 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 claims that she has been in the United States since before January 1, 1982, and that she is eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

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 and the 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).

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 a copy of a recognized identity card, such as a driver's license; whether the affiant provided some proof that he or she was present in the United States during the requisite period; and whether the affiant provided a valid telephone number. 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 issues in this proceeding are whether the applicant has furnished sufficient credible evidence to establish her continuous unlawful residence and continuous physical presence in the United States for the requisite periods.

The applicant initially submitted as evidence the following attestations:

- An affidavit from [REDACTED] in which she stated that she met the applicant in November of 1984. The affiant also stated that she met the applicant through her parents and that they attend the same church in Imperial Valle, California. The applicant further stated that she knows that the applicant entered the United States before 1982 because her parents told her that the applicant and her family had established themselves in El Centro, California, in early 1979, that her parents initially met the

applicant in October of 1981, and that the affiant remembers the applicant since 1984. The applicant stated that she knew how the applicant entered the United States before 1982 because she asked her mother, and her mother told her that the applicant walked from Tijuana, Mexico, to Chula Vista, California, and that family members helped them establish themselves in El Centro, California. The applicant has submitted and the AAO recognizes copies of her Illinois Drivers License and Certificate of Naturalization issued to her in San Diego, California, on August 23, 1996. Here, the affiant has not demonstrated that her knowledge of the applicant's entry into the United States is independent of her personal relationship with her parents or another third party. It appears that this knowledge is based primarily on what her parents or another third party told her about the applicant's entry into the United States; and therefore, the affiant's statement is essentially an extension of the applicant's personal testimony rather than independent corroboration of that testimony. The affiant has not provided evidence that she herself was present in the United States during the requisite period. Although the affiant alleges that the applicant has resided in the United States since 1981, she failed to provide any relevant and verifiable testimony, such as the applicant's address(es) in this country during the requisite period, to corroborate the applicant's claim of residence in the United States since prior to January 1, 1982. There is nothing in the record to demonstrate the frequency with which she maintained communications with the applicant. Because this affidavit is significantly lacking in detail and because it is not based upon firsthand knowledge, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

- An affidavit from [REDACTED] in which she stated that she met the applicant in the summer of 1979. The affiant further stated that she first met the applicant during a birthday party at the applicant's home in El Centro, California. She also stated that she knew that the applicant had come into the United States before 1982 because she and her parents visited the applicant's home in El Centro, California, and that the applicant was already established in the area at the time of her visit. The affiant stated that she knew how the applicant entered into the United States before 1982 because her mother told her that during a conversation that she had had with the applicant, the applicant mentioned that she had walked from Tijuana, Mexico, to Chula Vista, California, and immediately established herself in El Centro, California. The affiant submitted and the AAO recognizes a copy of her United States passport issued to her in Chicago, Illinois on March 2, 2005. Here, the affiant has not demonstrated that her knowledge of the applicant's entry into the United States is independent of her personal relationship with her mother. It appears that this knowledge is based primarily on what her mother or another third party told her about the applicant's entry into the United States; and therefore, the affiant's statement is essentially an extension of the applicant's personal testimony rather than independent corroboration of that testimony. The affiant has not provided evidence that she herself was present in the United States during the requisite period. Although the affiant alleges that the applicant has resided in the United States since 1979, she failed to provide any relevant and verifiable testimony, such as the applicant's address(es) in this country during the requisite

period, to corroborate the applicant's claim of residence in the United States since prior to January 1, 1982. There is nothing in the record to demonstrate the frequency with which she maintained communications with the applicant. Because this affidavit is lacking in detail and because it is not based upon firsthand knowledge, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

- An affidavit from [REDACTED] in which she stated that she met the applicant in March of 1979 at a church event in El Centro, California. She further stated that she knew that the applicant had come into the United States before 1982 because she became friends with the applicant after the church event in 1979, and thereafter visited with the applicant and her family at her home in El Centro, California. The affiant also stated that she knew how the applicant entered into the United States before 1982 because during a conversation that she had with the applicant, the applicant mentioned that she and her family crossed from Tijuana, Mexico, to Chula Vista, California, and established themselves right away in El Centro, California. This statement is inconsistent with the applicant's statement on Form I-687, at part #31 where she was asked to list all of her affiliations and associations in the United States and she in-turn indicated that she attended St. Mary Church in East Moline, Illinois, from May of 2000 to the present. The applicant does not acknowledge any affiliation with any church in El Centro, California. Because this affidavit contains testimony that conflicts with what the applicant showed on her Form I-687, doubt is cast on assertions made in the affidavit. 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, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The affiant submitted and the AAO recognizes the copies of her Illinois Drivers License issued to her in June of 2003 and her CIS issued Permanent Resident Card which indicates her residence since June of 1985.

Here, the affiant has not demonstrated that her knowledge of the applicant's entry into the United States is independent of her personal relationship with the applicant. It appears that this knowledge is based primarily on what the applicant told her about the applicant's entry into the United States; and therefore, the affiant's statement is essentially an extension of the applicant's personal testimony rather than independent corroboration of that testimony. The affiant has not provided evidence that she herself was present in the United States during the requisite period. There is nothing in the record to demonstrate the frequency with which she maintained communications with the applicant. Although the affiant alleges that the applicant has resided in the United States since 1979, she failed to provide any relevant and verifiable testimony, such as the applicant's address(es) in this country during the requisite period, to corroborate the applicant's claim of residence in the United States since prior to January 1, 1982. Because of its lack of detail and because it conflicts

with other evidence in the record, very minimal weight can be afforded to this affidavit in establishing that the applicant resided in the United States during the requisite period.

- An affidavit from [REDACTED] in which he stated that he met the applicant in July of 1981 when they worked together for the Abatti Produce Company, located in El Centro, California. He further stated that he knew that the applicant had come to the United States before 1982 because she worked with his brother at the Abatti Produce Company prior to 1982. The affiant also stated that he remembers visiting the applicant's home in the summer of 1981 in El Centro, California, and that his brother mentioned to him that the applicant had been living in California for a while. The affiant further stated that he knew how the applicant had entered into the United States before 1982 because the applicant mentioned to him during a conversation in late 1987 that she crossed the border from Tijuana, Mexico, to Chula Vista, California, and that she established herself right away, through the help of her sister, in El Centro, California. The affiant submitted and the AAO recognizes copies of his Illinois Drivers License issued to him in December of 2002 and his Certificate of Naturalization issued to him in Indianapolis, Indiana, on January 9, 2001. Although the applicant stated that he met the applicant in 1981 when they both worked for the Abatti Produce Company, he failed to submit any contemporaneous evidence, such as an employee identification card or pay stubs, to substantiate his claim. Here, the affiant has not demonstrated that his knowledge of the applicant's entry into the United States is independent of his personal relationship with the applicant. It appears that this knowledge is based primarily on what the applicant or another third party told him about the applicant's entry into the United States; and therefore, the affiant's statement is essentially an extension of the applicant's personal testimony rather than independent corroboration of that testimony. The affiant has not provided evidence that he himself was present in the United States during the requisite period. Although the affiant alleges that the applicant has resided in the United States since 1981, he failed to provide any relevant and verifiable testimony, such as the applicant's address(es) in this country during the requisite period, to corroborate the applicant's claim of residence in the United States since prior to January 1, 1982. There is nothing in the record to demonstrate the frequency with which he maintained communications with the applicant. Because this affidavit is lacking in detail and because it is not primarily based upon firsthand knowledge, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

The applicant also submitted as evidence copies of income tax documents and pay statements dated 2002 through 2006. However, the issue in this proceeding is whether the applicant has established her residence in the United States during the requisite period; and therefore, such evidence is non-evidentiary and will not be considered in determining the applicant's eligibility for the benefits sought.

The applicant submitted a letter written by [REDACTED] in which he stated that the applicant is a registered member of the St. Mary Church, and that she attends church regularly.

Here, [REDACTED] does not specify when the applicant became a member of the church nor does he indicate what the applicant's address was during her membership. Because this affidavit is lacking in detail it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

In denying the application the director noted that there was no evidence in the record to support the claims made by [REDACTED]

[REDACTED] or [REDACTED]. The director further noted that during the applicant's interview with the immigration officer she stated that she lived in Calexico, California, but that on her I-687 application she indicated that she lived in El Centro and Calipatria, California.

On appeal, the applicant states that she filed a legitimate I-687 application, and that due to no fault of her own, her personal papers were lost in the 1994 earthquake that took place in Los Angeles, California. The applicant continues by describing the documents that were lost and the events leading to the earthquake. The applicant provided as evidence copies of electric bills from Imperial Irrigation District, for the premises known as [REDACTED] El Centro, California, and dated April 24, 1981, July 23, 1982, May 23, 1984, November 23, 1986, June 24, 1987, and April 24, 1988. With reference to the electric bills, the applicant states that her friends from Los Angeles found them and sent them to her. The applicant also submitted as evidence copies of a photograph of herself and her daughter taken in 1994, a receipt from Target dated December 20, 1986, a map of the Los Angeles, California area where the 1994 earthquake allegedly took place, a handwritten cumulative school record for a [REDACTED] for the years 1978 through 1983, and a clinic appointment book. The applicant submitted a translated letter from a [REDACTED] of Mexico in which he states that he delivered the applicant's three children born in January of 1983, July of 1988, and January of 1990.

Although the applicant has submitted additional evidence on appeal, it is insufficient to establish her 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 her application was filed. The copies of the electric bills are dated too sparsely to demonstrate by a preponderance of the evidence that she resided continuously in the United States for the duration of the requisite period. Furthermore, it is highly unlikely, based upon the applicant's statement that her personal papers were all destroyed in the major earthquake of 1994, that such documents survived the catastrophe. In addition, there has been no evidence presented to show who the friends are in Los Angeles or the nature of their affiliation with the address noted above. The photograph submitted is dated 1994, which is subsequent to the time period at issue; and therefore, is non-evidentiary and will not be considered in determining the applicant's eligibility for the benefits sought. The receipt from Targets is generic and cannot be identified as belonging to the applicant for purposes of establishing her eligibility.

The applicant submitted a copy of a cumulative school record from Georgetown Public School in Georgetown, Texas, which she states reflects her niece's enrollment at the school from 1978 through 1983. The applicant also states that she is listed as the niece's guardian (mother) on the school record because she enrolled the child for each of the listed school years, because the child's mother was unavailable due to her work schedule. This statement is not credible. Although the applicant states that she was named the child's guardian because the child's mother was not available, the record shows that

the child's father, [REDACTED] is listed as her parent, along with his Georgetown, Texas address. The applicant does not claim that she ever resided in Texas. Furthermore, the authenticity of the handwritten document is questionable. Here, the applicant has not submitted any form of independent documentation to substantiate her claim.

The applicant submitted a copy of a clinic appointment book that she states was issued to her on July 10, 1981 by the Los Angeles County, USC Medical Center, and which identifies her medical appointments from July 10, 1981 to July 31, 1995. Contrary to the applicant's claim, on the cover of the applicant's appointment book it is printed, in the bottom left hand corner of that form, that it was revised in February of 1994. The AAO also notes that the 1981 entry is out of chronological order, and appears to have been fraudulently entered. In addition, the May 24, 1993 date appears to have also been fraudulently entered as the original date seems to have been covered-over and the 1993 date has been inserted in its place. It is further noted by the AAO that the May 24, 1993 date is also out of chronological order. 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 lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the apparent alteration of the document noted above.

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, the applicant has not provided any contemporaneous evidence of residence in the United States relating to before January 1, 1982, and has submitted attestations from four (4) people concerning the requisite time period, the totality of which were not sufficient evidence to prove by a preponderance of the evidence that she resided continuously in the United States for the duration of the requisite period.

The absence of sufficiently detailed 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 on his applications and his reliance upon documents with minimal probative value, it is concluded that he 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. Therefore, the director's decision will be affirmed and the appeal is dismissed.

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