

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

L1

PUBLIC COPY



FILE: [REDACTED]
MSC 06 102 20372

Office: DALLAS

Date: JAN 23 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, Dallas, and 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 deficiencies in the two additional affidavits submitted by the applicant in response to the notice of intent to deny (NOID) and ultimately concluded 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, counsel for the applicant addresses the various adverse findings noted in the NOID and provides an appellate brief along with two additional affidavits attesting to the applicant's residence in the United States.

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 Immigration and Nationality Act (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).

For purposes of establishing residence and presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the alien attempted to file a completed Form I-687 application and fee or was caused not to timely file, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. 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.* 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 during the requisite time period. The AAO notes that a number of the documents submitted in support of the claim discuss the applicant's residence in the United States after the statutorily relevant time period. Such documents include the following: an affidavit (submitted on appeal) from [REDACTED] in which the affiant discussed her acquaintance with the applicant since 1989; an affidavit from [REDACTED] dated January 11, 2007 in which [REDACTED] stated that she first met the applicant in July 1988; and an October 30, 2006 letter from [REDACTED] discussing her acquaintance with the applicant since approximately the year 2000. As these documents fail to address the statutorily relevant time period, they have no probative value in this proceeding. Other documentation submitted in support of the applicant's claim consists of the following:

1. A photocopy of a postcard and a photocopy of an envelope, both addressed to the applicant's husband at one of the addresses the applicant included in the list of past residence, found in No. 30 of the Form I-687. In addition to the deficiencies noted by the director in the NOID, neither mailing is actually addressed to the applicant. As such, even if the authenticity of these documents were not in question, neither establishes that the applicant resided in the United States during the relevant time period.
2. An affidavit dated December 29, 2005 from [REDACTED] the applicant's husband, claiming that he and the applicant have been residing in the United States since 1979. The affiant explained that from 1979 to 1984 he was self-employed as a landscaper. He also discussed his visit to Mexico in 1987 and his initial attempt to file the Form I-687 application. The affiant provided no information specific to the applicant, nor did he provide any information about the couple's purported residence in the United States between 1984 and 1987. These deficiencies indicate that this affidavit has minimal

probative value in establishing that the applicant resided in the United States during the relevant time period.

3. Three similarly formatted affidavits dated December 29, 2005 from [REDACTED], [REDACTED], and [REDACTED]. All three affiants claimed to have knowledge of the applicant's residence in the United States since 1979 even though none claimed to have actually met the applicant until June 1980 when the applicant commenced working as a babysitter for [REDACTED]. Although all three affiants described different circumstances under which they individually became acquainted with the applicant, they all similarly provided the list of addresses where the applicant claimed to have resided from 1979 to 1981 and from 1984 to 1988, and all three omitted the applicant's address between 1981 and 1984. This omission was identical in all three affidavits and is particularly suspicious in light of all three affiants' claims that they maintained contact with the applicant during the entire statutory time period. While the AAO withdraws the director's adverse finding that resulted from the same notary being used to notarize these three affidavits, the probative value of the attestations contained therein is minimal in light of the deficiencies described above.
4. Sworn declarations from [REDACTED], [REDACTED], and [REDACTED] attesting to their respective knowledge of the applicant during various portion of the statutory time period. [REDACTED] claimed to have met the applicant in 1985 at a party that took place at his sister's house. His attestation regarding the applicant's arrival to the United States prior to 1982 was based on statements the applicant made, not based on his own personal knowledge. [REDACTED] claimed to have met the applicant in November 1987 at a function that took place at her daughter's house. [REDACTED] had no knowledge of the applicant or the applicant's unlawful residence prior to November 1987. Lastly, in her statement, [REDACTED] stated that she first met the applicant in 1987 at her husband's place of work. It is noted that this statement from [REDACTED] is significantly different from her later statement (discussed above) in which she claimed that she did not meet the applicant until July 1988—after the statutory time period had lapsed.
5. An affidavit dated April 15, 2007 from [REDACTED], who claimed to have known the applicant since 1984 when the applicant babysat for him and his wife. The affiant provided no further information about the applicant during her purported residence in the United States during the statutory time period. As such, this affidavit has only minimal probative value in the present matter.

On appeal, counsel asserts that the inconsistencies in [REDACTED]'s statements "were minor and insignificant." However, counsel's argument is significantly flawed, as only one of [REDACTED]'s statements is actually relevant with regard to the applicant's overall claim. More specifically, while counsel may see the inconsistency as only a matter of being off by one year, in reality, only the statement made in the sworn declaration addresses the statutorily relevant time period. In the second statement, dated January 11, 2007, [REDACTED] did not actually claim to have met the applicant until after the statutory time period had ended. 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). In the present matter, counsel merely dismisses the inconsistency as insignificant and fails to establish that the relevant statement is true. As such, neither of [REDACTED]'s statements have probative value in the present matter.

In summary, the applicant has not provided any contemporaneous evidence of her own residence in the United States relating to the 1981-88 period, and has submitted deficient attestations that fail to adequately support her residence in the United States during that period. 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 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*, 20 I&N Dec. 77. 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.