

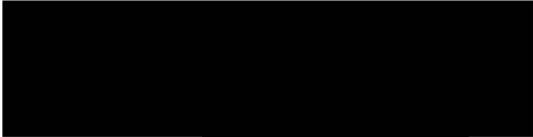
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U.S. Citizenship
and Immigration
Services

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FILE:

MSC 05 081 10708

Office: LOS ANGELES

Date: JAN 28 2008

IN RE:

Applicant:



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".

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, on December 20, 2004. 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. In denying the application, the director observed that the evidence submitted by the applicant, with the exception of one affidavit, was dated after 1990 and was thus not relevant. 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 April 4, 2006, the applicant filed an appeal of the director's decision dated March 1, 2006. A review of the record shows that the appeal was both timely and properly filed. The appeal was initially returned to the applicant based on the applicant's failure to include a receipt number on her Form I-694 and re-submitted on April 19, 2006. Nevertheless, on June 12, 2006, the director issued a decision rejecting the appeal as untimely filed. The director's decision dated June 12, 2006 was improper and is withdrawn. Jurisdiction over the applicant's appeal lies solely with the AAO. 8 C.F.R. § 245a.2(p).

On appeal, the applicant states that she has been in the United States since 1981. The applicant submits additional documentary evidence in support of her 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.* 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 (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 from prior to January 1, 1982 through the date she attempted to file a Form I-687 application with the Service in the original legalization application period of May 5, 1987 to May 4, 1988. 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 20, 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 that she resided at [REDACTED] from January 1994 until the present time. She did not list any addresses during the requisite period between 1981 and 1988. At part #33 of the applicant's Form I-687, where she was asked to list all of her employment in the United States since she first entered, the applicant stated that she was a student from 1981 to December 1983, and later worked as a domestic employee of [REDACTED] in Wilmington, California from January 1984 until November 1989.

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 support of her application, the applicant provided a copy of an employment affidavit executed by [REDACTED] on June 9, 1993. [REDACTED] stated in the affidavit that the applicant was employed by her as a domestic employee from January 1984 to November 1989, with no periods of layoff, and that no records of employment were maintained. She indicated her address as [REDACTED] Wilmington, California, but she did not provide a contact telephone number. It is noted that the record contains a Form I-687 application that was filed by the applicant in June 1993, on which she indicated that she resided at this address from January 1984 until November 1989. However, [REDACTED] did not specifically state that the applicant resided with her during this time period or provide any other details regarding the applicant's employment. Although [REDACTED] expressed a willingness to give testimony, her affidavit does not appear amenable to verification. Overall, the affidavit can be given limited weight in establishing the applicant's continuous residence in the United States from January 1984 through the end of the requisite period.

The applicant also provided extensive evidence in the form of tax records, pay stubs, bank statements, medical records, and birth and baptismal certificates for her U.S.-born children to establish her continuous residence in the United States from 1990 to 2004. However, since the applicant's residence during this period is not at issue in this proceeding, this evidence need not be discussed here.

The record also contains the following evidence that was submitted in support of the applicant's previous application for temporary residence in 1993:

- A form-letter "affidavit of witness" executed by [REDACTED] on June 9, 1993. Ms. [REDACTED] stated that she had personal knowledge that the applicant resided in Gardena, California from November 1981 to December 1983, in Wilmington, California from January 1984 from December 1992, and in Compton, California beginning in January 1993. Where asked to indicate how she dates the beginning of her acquaintance with the applicant, [REDACTED] stated that the applicant "is a hard-working, honest, reliable person, I highly recommend her." The record shows that [REDACTED] has filed a Form I-130 Petition for Alien Relative on behalf of the applicant and is in fact the applicant's sister. She did not reveal her relationship with the applicant in the affidavit.

A form-letter "affidavit of witness" executed by [REDACTED] on June 11, 1993. [REDACTED] also stated that she had personal knowledge that the applicant resided in Gardena, California from November 1981 to December 1983, in Wilmington, California from January 1984 from December 1992, and in Compton, California beginning in January 1993. She stated that she met the applicant in 1981 and that she has been great friends with her ever since.

While there is no specific regulation which governs what third party individual affidavits should contain to be of sufficient probative value, the regulations do set forth the elements which affidavits from organizations are to include. 8 C.F.R. § 245a.2(d)(3). These guidelines provide a basis for a flexible standard of the information which an affidavit should contain in order to render it probative for the purpose of comparison with the other evidence of record.

According to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3), a signed attestation should contain (1) an identification of the applicant by name; (2) the dates of the applicant's continuous residence to which the affiant can personally attest; (3) the address(es) where the applicant resided throughout the period which the affiant has known the applicant; (4) the basis for the affiant's acquaintance with the applicant; (5) the means by which the affiant may be contacted; and, (6) the origin of the information being attested to. *See* 8 C.F.R. § 245a.2(d)(3)(v). In addition, affidavits must be both credible and amenable to verification.

While these standards are not to be rigidly applied, an application which is lacking in contemporaneous documentation cannot be deemed approvable if considerable periods of claimed continuous residence rely entirely on affidavits which are considerably lacking in such basic and necessary information. Neither of these affidavits submitted in support of the application meet the regulatory guidelines. Neither affiant explained how they came to have personal knowledge of the applicant's residences in the United States. Rather, they simply state, in a conclusory manner, that they have known the applicant since 1981 and have personal knowledge of her residence in the United States. Neither affiant provides 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 over a period of 12 years. Neither affiant provided a contact telephone number at which they could be reached for verification, nor did they provide any proof of their relationship with the applicant, any proof that they themselves were in the United States during the requisite period or any identifying documents. Because of these deficiencies, the affidavits of Ms. [REDACTED] and [REDACTED] are not probative.

The director denied the application on March 1, 2006. In denying the application, the director observed that nearly all of the evidence submitted was dated outside the requisite period. The director acknowledged the affidavit from [REDACTED] but noted that the information contained in the affidavit was not verifiable. The director concluded that the evidence in the record was insufficient to establish the applicant's eligibility for temporary residence under Section 245A of the Act.

On appeal, the applicant states that she has been in the United States since 1981. She states that she is providing additional evidence of her residence in the United States since before January 1, 1982, and requests reconsideration of the director's decision.

On appeal, the applicant submits a photocopy of an immunization record bearing her name and birth date. It is not clear from the photocopy whether the portion of the document containing the applicant's name and birth date is part of the same document as the chart showing the details of the vaccinations received.

The chart itself has a place for the patient's name, sex and birthdate, which has been left blank. The vaccination chart ostensibly shows that one vaccine was given on February 12, 1981, and two vaccines were given on December 12, 1981, all by a clinic in Los Angeles. The applicant has consistently claimed that she first entered the United States in November 1981. If she was not in the United States in February 1981, it is reasonable to conclude that this is not, in fact, her immunization record. Upon close review, it appears that two of the dates were changed by hand to read "DEC 12" instead of "FEB 12," but one date was left unaltered. Furthermore, the "1" in "1981" also appears to be handwritten. The chart shows two vaccines given by "WCDHD" in September 1983, and two vaccines given by Long Beach Health Department on June 6, 1989.

Without reviewing the original document, it is difficult to verify whether this is in fact the applicant's vaccination record. The applicant has not previously submitted this document, although she has been interviewed twice in connection with her legalization applications, in 1993 and on June 29, 2005. Given the apparent alterations and the fact that the immunization record would place the applicant in the United States in February 1981, nine months before she claims to have arrived in this country, it has no probative value. 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).

The applicant also submits the following evidence in support of the appeal:

- A receipt from the Los Angeles County Department of Hospitals, showing a payment in the amount of \$85.00 from the applicant's mother for the applicant's account on November 28, 1981. While this document appears to be credible, and shows that the applicant was in the United States in November 1981, it is insufficient to establish the applicant's continuous residence in the United States for the duration of the requisite period.
- A letter dated August 26, 1991, from [REDACTED] of the [REDACTED] in Lawndale, California. [REDACTED] stated that the applicant was a patient of the clinic since November 11, 1981. The letter is unaccompanied by any medical records, receipts or other evidence that would show that the applicant regularly received treatment at this office during the requisite period. With additional details and corroborating evidence, this letter is insufficient to establish the applicant's continuous residence in the United States from 1981 to 1988. Furthermore, it is noted that the immunization records do not show any vaccines provided by this particular clinic.

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 her 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 credible, contemporaneous evidence of residence in the United States relating to the 1981-88 period. While she has submitted three (3) attestations from affiants concerning that period, none of them are sufficiently 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 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 she 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.