

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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



U.S. Citizenship and Immigration Services

PUBLIC COPY

41



FILE: MSC 04-363-11331

Office: SAN FRANCISCO

Date: JUL 07 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, San Francisco, and that 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. The director acknowledged that the applicant submitted affidavits from individuals who claimed to have knowledge of the beneficiary's residence in the United States during the requisite period, but noted that the affidavits were insufficient to establish the beneficiary's continuous residence in the United States. The director also noted other facts in the record which the director believed cast doubt on the credibility of the applicant's claim. 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, counsel for the applicant asserts that USCIS erred in interpreting the applicant's interview testimony and that the applicant has provided sufficient credible, probative evidence to meet her burden of proof.

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 be physically present in the United States from November 6, 1986 until the date of filing the application. 8 C.F.R. § 245a.2(b).

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) 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 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, 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 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 September 27, 2004. The applicant signed this form under penalty of perjury, certifying that the information she provided 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 did not initially indicate an address in the United States prior to 1991. However, the record indicates that during her interview with a CIS officer on May 17, 2006, she indicated that she did reside in San Francisco from 1983 until 1992. She did not provide a street address and she did not indicate a United States address prior to 1983 either in her application or during the interview. Similarly, at Part #33 where applicants were asked to list employment in the United States since entry the applicant did not indicate any United States employment prior to 1997. The record reflects that during her interview with CIS she stated that she worked as a maid from 1981 until 1992. No other details were given.

Based upon the above described inconsistencies in the record, the director denied the application on October 31, 2006. She acknowledged that the applicant had submitted evidence in support of her claims of continuous residency but stated that the applicant had provided inconsistent testimony regarding her initial entry into the United States. The director noted that the applicant

provided testimony on an Affidavit of Circumstances submitted to CIS on April 13, 1992 in connection with a class membership application for members of Plaintiff Subclass 1 in *Catholic Social Services v. Thornburgh*. In this document, the director noted that in question #10 of this document, the applicant indicated that she first entered the United States in San Francisco in 1981 with a fraudulent visa. The director found this testimony to be inconsistent with the applicant's testimony provided at her CIS interview on May 17, 2006 in which the director indicated that the applicant testified to entering the United States without inspection in 1981 through San Diego. The director found that this inconsistency cast doubt on the reliability of the applicant's testimony.

**A review of the record indicates that the director erred in this determination.** As noted in counsel's response to the NOID received by USCIS on June 20, 2006, the director improperly read the Affidavit of Circumstances in question. This affidavit asks the question, "when and where (at what border point) prior to January 1, 1982, did you enter the United States?" The applicant indicated that she entered the United States via San Francisco in March 1981. The second part of the question asks the manner of entry and four alternatives are provided: valid non-immigrant visa; fraudulent visa; entry without inspection; other. There is blank space to the left of each alternative which allows the applicant to indicate a choice. The applicant checked the space to the left of "entry without inspection." Thus, the director appears to have erred in determining that the applicant provided inconsistent testimony regarding her initial entry to the United States and basing the denial of the instant application on this perceived inconsistency.

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.12(f).<sup>1</sup> As such, the record of evidence will be examined below.

As stated above, 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

---

<sup>1</sup> The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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 for the duration of the requisite period, the applicant submitted the following evidence:

- A notarized declaration dated March 27, 2006 from [REDACTED] who stated that she is a U.S. citizen residing in Monroe, Washington. The declarant indicated that she met the applicant in July 1987 through mutual friends. She indicated that the applicant lived with her at [REDACTED], Monroe, Washington from July 1987 until September 1987. Although Ms. [REDACTED] confirmed that she met the applicant in the United States in 1987, she did not indicate that she has any direct, personal knowledge of her continuous residence in this country for the duration of the requisite period, or at any point prior to July 1987. Thus, her testimony is probative of the applicants continuous residency in the United States from July 1987 until September 1987.
- A letter signed by [REDACTED] who indicated that he is the temple president for Iskcon of the Bay Area, Inc. International Society for Krishna Consciousness. In this letter, Mr. [REDACTED] states, “[REDACTED] was a regular visitor to this temple since 1982. She got married in this temple on October 29, 1992.” This letter does not conform to the statutory requirements for attestations by churches, unions, or other organizations, which is found at 8 C.F.R. § 245a.2 ((d)(3)(v). That regulation requires such attestations to “show the inclusive dates of membership and state the address where the applicant resided during the membership period.” Mr. [REDACTED] does not provide dates of the applicant’s membership or any other information that is probative of the issue of her initial entrance to the United States prior to January 1981 or her continuous residence for the duration of the statutory period. Thus, it can be given no probative weight.
- A notarized letter dated February 14, 2006 from [REDACTED] who stated that she is a United States citizen currently residing in California. Ms. [REDACTED] indicated that she has known the applicant since 1983. However, she did not indicate where or how she met the applicant, or how frequently or under what circumstances she saw the applicant during the requisite period, nor did she provide any other details regarding the events and circumstances of the applicant's residence in the United States that would tend to lend probative value to her statement. Moreover, she did not specifically state that he has direct, personal knowledge that the applicant continuously resided in the United States during the requisite period. For these reasons, this letter can be given only minimal weight as corroborating evidence.
- A letter from [REDACTED], President of Dale’s Auto Service Inc. of San Francisco, California. In this letter, [REDACTED] indicated that he has known the applicant since “around 1988.” Since he does not state with specificity where or when he met the

applicant, and his statements do not concern the relevant time period, this letter will be given no evidentiary weight.

- An affidavit dated April 10, 1992 from [REDACTED] in which the affiant stated that he drove the applicant to Vancouver, British Columbia on September 25, 1987 and that he knew that the applicant returned to San Francisco on October 10, 1987 because she called him from San Francisco. While his statements are probative of whether the applicant was present in the United States in September 1987 and whether she traveled outside of the United States during that time period, they provide no evidence of the applicant's continuous residency in the United States from prior to January 1, 1982 until September 1987.

Upon review, the evidence provided does not establish that the applicant entered the United States prior to January 1, 1987 and resided in the United States continuously for the duration of the statutory period. While an applicant's failure to provide evidence other than affidavits shall not be the sole basis for finding that he or she failed to meet the continuous residency requirements, 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 certain basic and necessary information. As discussed above, the affiants' statements are significantly lacking in detail and do not establish that the affiants actually had personal knowledge of the events and circumstances of the applicant's residence in the United States. Few of the affiants provided much relevant information beyond acknowledging that they met the applicant in 1987. Overall, the affidavits provided are so deficient in detail that they can be given no significant probative value. Further, this applicant has provided no contemporaneous evidence of residence in the United States relating to 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. 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).

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 affidavits 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.