

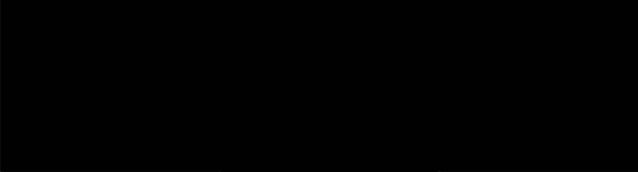
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U.S. Citizenship
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Services

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FILE: MSC-05-343-12049

Office: MIAMI

Date: JUL 08 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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

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, Miami. 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. 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 the director erred in denying the application by imposing a higher burden than a preponderance of the evidence. She asserts that the evidence she submitted meets the standard of preponderance of the evidence.

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).

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 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, 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 Supplement to Citizenship and Immigration Services (CIS) on September 8, 2005. 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 listed only the following address during the requisite period: [REDACTED], Miami, Florida from November 1981 to July 1988. At part #32 where applicants were asked to list all absences from the United States since entry, the applicant listed one absence during the requisite period, which was a trip to the Bahamas to visit family and friends from January to April of 1987. According to 8 C.F.R. § 245a.2(h)(1)(i), an applicant for temporary resident status shall be regarded as having resided continuously in the United States if, at the time of filing of the application, no single absence from the United States has exceeded 45 days, and the aggregate of all absences has not exceeded 180 days between January 1, 1982 through the date the application for temporary resident status is filed, unless the applicant can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed. Since the applicant’s visit to the Bahamas spanned the complete months of February and March, it must have exceeded 45 days. The applicant provided no explanation for the

delay in her returning to the United States. As a result, the applicant is found not to have resided continuously in the United States throughout the requisite period. At part #33 where applicants were asked to list all employment in the United States since entry, the applicant indicated only that she was a farm worker from December 1981 to January 1987 for [REDACTED] at [REDACTED] Loxahatchee, Florida.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982 the applicant provided multiple attestations. She provided a notarized declaration from [REDACTED] of [REDACTED]. The declarant stated that the applicant was employed by the declarant. She was hired in December 1981 for fruit picking. The declaration does not conform to regulatory standards for letters from employers as stated in 8 C.F.R. § 245a.2(d)(3)(i). Specifically, the declaration does not include the applicant's address at the time of employment, periods of layoff, whether or not the information was taken from official company records, where the records are located, and whether CIS may have access to the records. The declaration also fails to specify whether or when the applicant ended her employment with Seminole Harvesting. Therefore, this document constitutes only limited evidence that the applicant resided in the United States during December 1981.

The affidavit from [REDACTED] states that Mr. and Mrs. [REDACTED], elsewhere in the record identified as the applicant's parents, were tenants of the affiant. Mr. and Mrs. [REDACTED] were tenants at [REDACTED], Belleglade, Florida from December 1981 to January 1987. The relevance of this document to the applicant's claim is unclear. Since the address listed for the applicant's parents is not consistent with the address the applicant listed on her Form I-687 for the requisite period, this document is found not to support the applicant's claim of continuous residence in the United States during the requisite period.

The applicant provided a declaration from [REDACTED] dated October 20, 1982. The letter indicates that the applicant "comes on a weekly basis to [the declarant's] condo . . . on Miami Beach to help [the declarant] with cleaning the apartment." This declaration fails to indicate when the applicant began working for the declarant. This declaration is also somewhat inconsistent with the applicant's Form I-687, where she failed to list any housecleaning positions when asked to list all employment in the United States. Therefore, this declaration merely constitutes some limited evidence that the applicant resided in the United States during October 1982.

The applicant also submitted a letter from [REDACTED] dated June 6, 1988. The letter states that the declarant met the applicant in December 1981 through some friends. The friends introduced the declarant to the applicant's parents, Mr. and Mrs. [REDACTED], so that they could help the declarant with household chores. The declarant stated that the applicant's parents are farm workers and, with their daughter, are always looking for day work to supplement their farm income. The applicant helps the declarant with chores, including cooking and cleaning on a weekly basis. This declaration fails to specifically state that the applicant and the declarant met in the United States or to provide specific dates of employment. In addition, this declaration is somewhat inconsistent with the applicant's Form I-687, where she failed to list any housecleaning positions

when asked to list all employment in the United States. As a result, this declaration merely constitutes some evidence that the applicant resided in the United States in June 1988.

The applicant also provided two affidavits from herself. Her first affidavit is undated and explains that she worked as a farm worker from November 1981 to 1987. She stated that she would occasionally work cleaning houses. The applicant neglected to explain her failure to list housecleaning on her Form I-687. The applicant stated that, “[d]uring that time,” her mother’s health began to deteriorate. The applicant traveled to the Bahamas with her parents to visit friends and see if life would be better there. After a few months, she could not find a good job and returned to the United States. This affidavit confirms the applicant’s visit to the Bahamas, which exceeded 45 days, and failed to indicate that due to emergent reasons, her return to the United States could not be accomplished within the time period allowed.

The applicant provided an affidavit dated December 12, 2006. This affidavit states that the applicant entered the United States in 1981 and remained there until after May 1987. This information is inconsistent with the applicant’s Form I-687, where she indicated that she was absent from the United States between January and April 1987 on a trip to the Bahamas. This information is also inconsistent with the applicant’s prior affidavit, where she indicated that she traveled to the Bahamas at some time between November 1981 and 1987. The applicant also stated that she and her parents lived in one room at [REDACTED] from 1981 to 1987, and paid \$35 per week for the room. This information is inconsistent with the applicant’s Form I-687, where she indicated that she resided during the requisite period at [REDACTED] instead of at the address she listed for [REDACTED]. This information is also inconsistent with the declaration from [REDACTED], which indicates that the applicant’s parents resided at [REDACTED] in Belle Glade, Florida from December 1981 to January 1987. The applicant failed to explain these inconsistencies. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent, objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The applicant has failed to submit independent, objective evidence to support a reasonable explanation of these inconsistencies.

In denying the application the director noted 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 found 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 the director erred in denying the application by imposing a higher burden than a preponderance of the evidence. The evidence submitted by the applicant meets the standard of preponderance of the evidence.

In summary, the applicant has provided attestations that support her residence in the United States during December 1981, October 1982, June 1988; are inconsistent with her Form I-687; or fail to specify her period of residence in the United States. In addition, the applicant was absent from the United States for a period exceeding 45 days and failed to establish that due to emergent reasons, her return to the United States could not be accomplished within the time period allowed.

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 contradictions between the applicant's Form I-687 and the documents she submitted, her reliance upon documents with minimal probative value, and her absence from the United States exceeding 45 days during the requisite period, 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.