

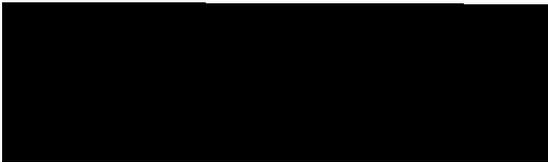
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U.S. Department of Homeland Security
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U.S. Citizenship
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Services

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FILE:



Office: NEWARK

Date:

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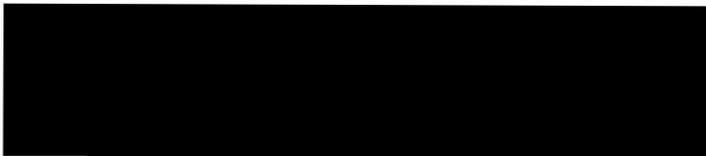
IN RE: Applicant:



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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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, Newark. The appeal will be dismissed.

The district director denied the application because the applicant failed to demonstrate credibly that she entered the United States before January 1, 1982, and thereafter resided in the United States in a continuous unlawful status.

On appeal, counsel asserted that the director failed to adequately consider all of the evidence, which counsel asserts demonstrates the applicant's eligibility.

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 (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 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.2(d)(6).

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 regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant’s employment must provide the applicant’s address at the time of employment, identify the exact period of employment, show periods of layoff, state the applicant’s duties, declare whether the information was taken from company records, and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

On the Form I-687 application, at item 30, the applicant stated that she had lived at [REDACTED] in Newark, New Jersey, from September 1980 to December 1985, and at [REDACTED], in Newark, New Jersey, from January 1985 to January 1995. This office notes that those two periods overlap from January 1985 to December 1985, but suspects this was occasioned by a mere typographical error. At item 33, the applicant stated that she had been self-employed as a house cleaner from September 1980 until she signed that application on May 10, 2005.

The pertinent evidence in the record is described below.

- The record contains a notarized letter dated May 4, 2005 from [REDACTED] of [REDACTED], Newark, New Jersey, purportedly notarized by [REDACTED] Mr. [REDACTED] stated that the applicant lived at [REDACTED] also in Newark, from 1981 to 1985. This office notes that, on her Form I-687, the applicant stated that she first lived at [REDACTED] during September of 1980. Although the addresses provided for [REDACTED] and the applicant are both in Newark, this office notes that they are almost five miles apart, which indicates that the affiant and the applicant would not necessarily interact during daily activities. Mr. [REDACTED] did not state the basis of his asserted knowledge of the applicant’s residence from 1981 to 1985. He did not state how he came to know the applicant, where they met, the nature of their relationship, the nature and frequency of their meetings during

the period of requisite residence or any other detail. Because of the lack of detail Mr. [REDACTED] letter will be accorded very little evidentiary value, even standing alone.¹

- Further, however, the record contains a second May 4, 2006 affidavit, also from [REDACTED] purportedly notarized by [REDACTED]. The bodies of the two affidavits are identical, but they purport to have both been notarized on May 4, 2005 by different New Jersey notaries. That [REDACTED] would prepare two copies of the affidavit and have them notarized by two different notaries on the same day, for submission by the applicant more than a year apart,² is manifestly unlikely.

Yet further, although those affidavits were purportedly sworn, subscribed, and notarized on May 4, 2005, the notary's seal of [REDACTED] states, "My commission expires August 3, 2010." A website maintained by the State of New Jersey Department of the Treasury at <http://www.state.nj.us/treasury/revenue/dcr/programs/notary.html> (Accessed June 26, 2008) states, "The State Treasurer appoints a notary public for a five-year period and may renew the appointment for five-year increments." Based on that statement, this office does not believe that a document notarized on May 4, 2005 could legitimately bear a notary's stamp that did not expire until August 3, 2010.

Those irregularities suggest that a false notary's attestation was procured for the second May 4, 2005 affidavit provided. Because of that finding, the May 4, 2000 affidavits purportedly from [REDACTED] will be accorded no evidentiary value.

Further, 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. The applicant must resolve any inconsistencies in the record with competent, independent, objective evidence. Attempts to explain or reconcile such inconsistencies, absent competent objective evidence sufficient to demonstrate where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (Comm. 1988). Because of the apparently falsified notary's attestation, the credibility of all of the applicant's assertions, and the evidentiary value of all of the remaining evidence, is also greatly diminished.

The record contains two almost identical letters, both purportedly from Dr. and Mrs. [REDACTED] of Upper Saddle River, New Jersey, and both dated May 5, 2005. In both letters, the affiants stated that they have known the applicant for over eight years. This office notes that the eight years prior to the date of that letter were not within the period of requisite residence. That letter is not relevant to any material issue in this case.

¹ Even if accorded high evidentiary value, that affidavit does not speak to the entire period of requisite residence.

² As is noted below, one copy of the May 4, 2005 affidavit was submitted with the application, which was received on June 9, 2005, and the other May 4, 2005 affidavit was submitted with the response to the notice of intent to deny, and was received on July 10, 2006.

Curiously, those two letters, although identical in content, were prepared in different typefaces and stamped by different New Jersey notaries, one of whom was [REDACTED]. Why the [REDACTED] would prepare two nearly identical letters, both signed by both of the [REDACTED] and have them attested to by two different notaries, are unclear. Further, although the signatures have not been professionally analyzed, this office notes that the signatures of [REDACTED] on the two letters appear not to match, and that the signatures of [REDACTED] on those two letters also do not appear to match.

Because of the questionable authenticity of the two letters purportedly from the [REDACTED], and because of the increased suspicion occasioned by the submission of apparently falsified evidence, the letters from the [REDACTED] will be accorded no evidentiary value.

- The record contains an undated form declaration entitled “Affidavit of Witness,” from [REDACTED] of [REDACTED], Union, New Jersey. That declaration was stamped by a notary, but the notary did not indicate either that she witnessed the declarant’s signature or that she administered an oath to the declarant. As such, the notary’s signature does not convert the declaration into an affidavit, and does not otherwise contribute to its credibility. In fact, that the notary stamped the declaration but did not attest to it raises suspicions.

In the declaration [REDACTED] stated that the applicant has resided in Newark, New Jersey from September 1980 through the date of the declaration, which date, as is noted above, is not stated. The preprinted declaration further states, “that he/she is able to determine the date of the beginning of acquaintance with the applicant in the United States from the following facts,” to which the declarant responded, “friends.” The declarant did not otherwise specify the basis of her asserted knowledge of the applicant’s residence in the United States. This office notes that the addresses given for the applicant and [REDACTED] are almost ten miles apart, which indicates that the applicant and [REDACTED] would not necessarily interact during ordinary daily activity.

The preprinted declaration further stated, “that the longest period during the residence described in which I have known of the applicant is,” to which the declarant responded, “January 1984.” The intended meaning of that cryptic phrase and the unrelated answer, taken together, is unclear to this office.

The declarant’s conclusory statement that the applicant lived in the United States from September 1980 through some unknown date is entirely without any other detail. It does not state when and where the applicant and the declarant met. Other than “friends,” it does not specify the nature and frequency of their subsequent meetings.

Because of the irregularities in the notary’s subscription and the lack of detail in the declaration, and the suspicion occasioned by the submission of other apparently falsified evidence in this matter, the declaration is accorded no evidentiary weight, either for the proposition that the applicant was in the United States prior to January 1, 1982, or for the

proposition that she subsequently continuously resided in the United States throughout the period of requisite residence.

- The record contains a properly notarized form affidavit dated December 12, 2005, also from [REDACTED] of Union, New Jersey. In that affidavit, the affiant merely stated that the applicant resided in the United States from September 1980 to the date of that affidavit, and that she and the applicant are friends. Again, that form affidavit states, “that the longest period during the residence described in which I have known of the applicant is _____.” And “Janeiro [January] 1984” was entered. What was meant by that phrase and that answer is unclear.

Again, the affiant did not state where she and the applicant met, or characterize the nature and frequency of their meetings, and the lengths of any absences during the requisite period. The conclusory statement that the applicant lived in the United States since September 1980 is insufficiently detailed. Because of the lack of detail and the suspicion occasioned by the submission of apparently falsified evidence in this matter, the affidavit is accorded no evidentiary weight either for the proposition that the applicant was in the United States prior to January 1, 1982, or for the proposition that the applicant subsequently resided continuously in the United States.

- The record contains two form affidavits, dated May 9, 2005 and December 12, 2005, from [REDACTED] a of [REDACTED] Orange, New Jersey. In both of those nearly identical affidavits, [REDACTED] stated he and the applicant attended the same church, “interacted [sic] in similar activities,” and became friends, and that to his personal knowledge the applicant resided in Newark, New Jersey from January 1981 to the date of that affidavit.

Those preprinted declarations, like the preprinted declaration of [REDACTED] stated, “that the longest period during the residence described in which I have known of the applicant is,” to which the declarant responded, on both affidavits, “24 years and 4 months.” Again, the intended meaning of the preprinted phrase and the intended meaning of the applicant’s response are unclear.

This office notes that the applicant stated, on her Form I-687 application, that she began living in Newark during September of 1980, rather than during January 1981. Further, the affiant did not state how often he saw the applicant or how much time may have passed between some contacts. The basis of the applicant’s asserted knowledge of the applicant’s residence in Newark is unknown to this office.

Because of the lack of specificity and the discrepancy between that document and the applicant’s own statement pertinent to her residential history, and because of the suspicion occasioned by the submission of other apparently falsified evidence in this matter, those affidavits are accorded no evidentiary weight.

The record contains two form affidavits, dated April 30, 2005 and December 12, 2005, both from [REDACTED] of [REDACTED], Newark, New Jersey. In both affidavits, the affiant stated that he became acquainted with the applicant when she cleaned his house.³ In the April 30, 2005 affidavit the affiant stated that he has known the applicant since January 1981, and in the December 12, 2005 affidavit he stated that the applicant has lived in Newark, New Jersey since January of 1981. Again, this office notes that the applicant stated that she first lived in Newark, New Jersey during September 1980.

The affiant provided no additional detail of the nature or frequency of his encounters with the applicant. Because of the lack of detail provided and the suspicion occasioned by the submission of apparently falsified evidence in this matter those affidavits will be accorded no evidentiary value, either for the proposition that the applicant was in the United States during January of 1981 or for the proposition that the applicant resided continuously in the United States during the period of requisite residence.

- The record contains a letter dated November 24, 2005 from [REDACTED] and [REDACTED] of Montvale, New Jersey. That letter states that the applicant is a friend and has helped us with our house for the last five years.⁴ This office notes that the eight years prior to the date of that letter were not within the period of requisite residence. That letter is not relevant to any material issue in this case.
- The record contains a declaration, dated November 26, 2005, from the applicant. In it the applicant gives details of her then current employment. That letter is not relevant to any material issue in this case.

The record contains no other evidence pertinent to the applicant's residence in the United States during the salient period.

With the Form I-687 application the applicant provided the undated declaration of [REDACTED] one of the May 4, 2005 affidavits of [REDACTED], the May 9, 2005 affidavit of [REDACTED] the April 20, 2005 affidavit of [REDACTED], and one of the May 5, 2005 letters of [REDACTED] and [REDACTED]

In a Notice of Intent to Deny (NOID), dated June 23, 2006, the director stated that the applicant had submitted insufficient evidence to demonstrate his entry into the United States prior to January 1, 1982, and continuous residence during the requisite period. The director granted the applicant thirty days to submit additional evidence.

³ If the affidavits were to be considered as an employer's letter pursuant to 8 C.F.R. § 245a.2(d)(3)(i), its evidentiary value would be diminished because it does not conform to the requirements of that regulation.

⁴ Again, if considered as an employer's letter, the evidentiary value of this letter would be reduced, as it does not conform to the requirements of 8 C.F.R. § 245a.2(d)(3)(i).

In response counsel submitted the December 12, 2005 letter of [REDACTED], the December 12, 2005 letter of [REDACTED], the other May 4, 2006 affidavit of [REDACTED], the other May 5, 2005 letter of [REDACTED] and [REDACTED], the November 24, 2005 letter of the [REDACTED]s, and the applicant's November 26, 2005 letter, all of which are described above, and additional copies of evidence previously submitted.

In the Notice of Decision, dated July 21, 2006, the director denied the application based on the reasons stated in the NOID.

On appeal, counsel submitted no additional evidence, but argued that the affidavits are all *bona fide* and genuine, and that the evidence submitted demonstrates the applicant's eligibility.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate entry into the United States prior to January 1, 1982, and continuous residence during the requisite period.

One of the May 4, 2006 affidavits of [REDACTED] appears to have been deceptively notarized, and the authenticity of at least one of the letters from Dr. and Mrs. [REDACTED] is very questionable.

All of the remaining evidence lacks detail and, even standing alone, would have very little evidentiary weight. Further, the suspicion engendered by the submission of the May 4, 2004 affidavit of [REDACTED], given the apparently falsified attestation of [REDACTED] and the submission the questionable letters from Dr. and Mrs. [REDACTED], the credibility and evidentiary value of the remaining evidence is destroyed.

The evidence must be evaluated not by the quantity of evidence alone but by its quality. The record contains no credible documentation to corroborate the applicant's claim of continuous residence. 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 paucity of credible supporting documentation the application has failed to meet her burden of proof and 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. The appeal will be dismissed.

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