

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

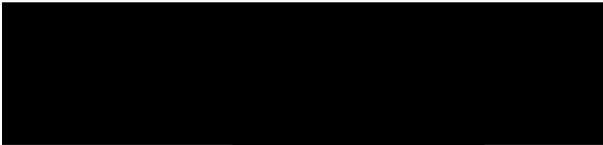
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



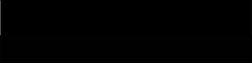
U.S. Citizenship
and Immigration
Services

PUBLIC COPY

L1



FILE:



Office: NEW ORLEANS (FORT SMITH)

MSC 06 059 11087

Date: JUL 24 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. 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, New Orleans. 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 was statutorily eligible to file for the benefit herein sought. The director specifically found that the applicant's Form I-687 and her interview statements indicated that she had not entered the United States prior to 1987, and that, therefore, she failed to establish 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 submits additional proof stating that she came to the United States for the first time "on Jan. 1982." The applicant further states that due to a lack of knowledge, moving from one state to another state, and not having bills in her name, proof of her residence has been lost through the years. The applicant states that over half of her life has been in this country, and she asks that her appeal be considered and that she be granted the immigration benefit sought under Section 245A of the Act and the CSS/NEWMAN settlement agreements.

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 245(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).

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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to establish that she is eligible for the benefit sought, and that she has demonstrated that she resided in the United States for the duration of the requisite period. Here, the applicant submitted the following documentary evidence:

Sworn Statement

- The applicant submitted, on appeal, a sworn statement from [REDACTED], who states that in 1982 the applicant was renting, from the statement author, the author’s house located at [REDACTED] Bay City, TX 77414 for \$100 per month. The statement author indicates that the applicant was timely with her rent payments. The statement provides no additional information.

Other Evidence

- The applicant submitted additional evidence (various forms of identification, a statement from the pastor of St. Raphael Catholic Church, a 2004 tax return, various receipts, and

copies of medical bills) that is not relevant to these proceedings in that the evidence submitted does not establish, or assert, that the applicant resided in the United States during the requisite period for the immigration benefit sought. The evidence shall, therefore, not be considered.

- The record of proceeding contains the interview notes of the applicant's legalization interview. Those notes indicate that the applicant states that she first came to the United States in 1987, entering through Mexico without inspection. Those notes are consistent with the applicant's Form I-687 wherein she indicates that she first entered the United States in 1987.

None of the evidence submitted by the applicant establishes that he entered the United States prior to 1982 as established by applicable regulation to establish eligibility for the immigration benefit sought under Section 245A of the Act and the CSS/NEWMAN settlement agreements. The record consists of the following evidence relative to the applicant's first date of entry into the United States:

- The Form I-687 which states that the applicant first entry into the United States was in 1987;
- The notes of the applicant's legalization interview wherein the applicant stated to a United States immigration officer that she first entered the United States through Mexico, without inspection, in 1987; and
- The sworn statement of [REDACTED], submitted by the applicant for the first time on appeal, states that the applicant rented a house located in Bay City, TX from [REDACTED] in 1982 (not prior to 1982). The statement does not provide corroborating proof of any such rental such as a rental agreement, rental receipts, or other documentation. Further, it is noted that the applicant, who was born on January 21, 1973, would have been 9 years of age in January of 1982.

Although not required by regulation, the applicant has not provided any contemporaneous evidence of residence in the United States during the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. For example, such documentation could include, but is not limited to, copies of: medical records; school records; real estate/lease documentation; telephone bills; dated purchase receipts; and bank statements. 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 her claim. Pursuant to 8 C.F.R. § 245a.12(e), 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 the affidavits submitted fail to establish continuous residence in an unlawful status in the United States during the requisite period.

It should further be noted that the applicant's testimony to a U.S. immigration officer, and her statement on her Form I-687, indicates that the applicant first came to the United States in 1987, not prior to 1982 as required by regulation for the benefit sought. On appeal, the applicant attempts to establish for the first time, that she resided in the United States in 1982 (not prior to 1982 as required). The sworn statement submitted on appeal directly contradicts other evidence in the applicant's case. The applicant has not provided a reasonable explanation for this inconsistency. 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. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that she has continuously resided in an unlawful status in the United States for the requisite period 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.