

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

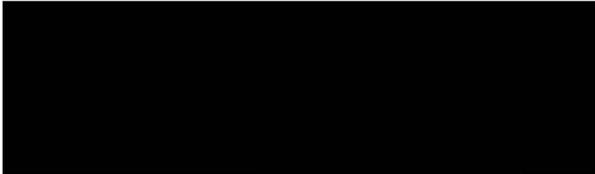
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

41



FILE: [Redacted]
MSC-06-031-15884

Office: LOS ANGELES

Date: **JUN 09 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:

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.

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, 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. 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 issued a Form I-72, requesting additional evidence of the applicant's residence in the United States during the requisite period. The director determined that pursuant to 8 C.F.R. §103.2(b)(13), the applicant abandoned her application because she failed to timely respond to the Form I-72.

On appeal, the applicant asserts that she responded to the Form I-72 in a timely manner. The applicant furnishes copies of a certified mail receipt and a parking receipt as evidence that she timely submitted the requested documentation.

According to 8 C.F.R. § 103.2(b)(15), a denial due to abandonment may not be appealed. However, the record shows that the applicant responded to the Form I-72 with the requested documentation in a timely manner. Therefore, the specific part of the director's decision denying the application as abandoned shall be withdrawn.

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 October 31, 2005. At part #30 of the Form I-687 application where applicants are asked to list all residences in the United States since first entry, the applicant showed that during the requisite period she resided in Santa Ana, California. The applicant listed on her application her date of birth as October 11, 1972. Therefore, she was nine years old at the time of her entry into the United States. The applicant submitted numerous school records as evidence of her continuous residence in the United States during the requisite period.

The applicant submitted with her application copies of the following documents:

- A student of the month certificate issued to the applicant from Roosevelt Junior School, dated November 9, 1985;
- A student of the week certificate issued to the applicant from Roosevelt Junior School, dated January 28, 1985;
- A principal's award certificate issued to the applicant from Roosevelt Elementary School, dated April 30, 1983;
- The applicant's report card from the Anaheim City School District, issued in Spanish, for her attendance at Roosevelt Elementary during the 1982-1983 school year; and
- A great listener award certificate issued to the applicant on October 11, 1982.

The applicant's record shows that on June 2, 2003, she filed a Form I-485, Application to Adjust Status, pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act. The applicant submitted with this application the above cited documents and copies of the following additional documentation:

- A certificate of recognition issued to the applicant on April 2, 1986;
- A training certificate issued to the applicant from the Club Center of Anaheim, dated June 28, 1985;
- A certificate of achievement issued to the applicant from Roosevelt Elementary, dated June 14, 1983; and
- A California Immunization Record for the applicant showing she received vaccinations in 1981 and 1982. Since this document is a copy it constitutes only limited evidence that the applicant resided in the United States in 1981 and 1982. It should also be noted that the vaccination record form shows it was issued in July 1998. There is a "7/98" notation on the bottom left of the record. Hence, the applicant obtained her vaccination record subsequent to July 1998.

The record shows that on May 1, 2006, the applicant was interviewed at the Los Angeles District Office. During the interview, the adjudication officer issued a Form I-72 to the applicant, requesting that she furnish additional evidence of her residence in the United States during the requisite period. Specifically, the director requested the applicant's school transcripts for the period of 1982 until 1988.

In response to the Form I-72, the applicant submitted the following documentation:

- A copy of the applicant's report card from the Santa Ana Unified School District for her attendance at Lowell Elementary School during the academic year 1981-1982. The credibility of this document is suspect because the report card form shows that it was revised in August 2002. There is a "Rev. 8/02" notation on the bottom left of the document. Accordingly, it is improbable that the applicant received this report card for the 1981-1982 academic year. Therefore, this document is without any probative value and credibility as evidence of the applicant's residence in the United States from 1981 until 1982.
- A copy of the applicant's report card from the Santa Ana Unified School District, issued in Spanish, for her attendance at Lowell Elementary School. The comments section of this report card, dated June 28, 1983, provides, "[REDACTED] has been a delightful addition to our class. She is capable of doing excellent work . . . I have enjoyed having her gentleness and kindness in our classroom." The credibility of this document is also suspect because the report card form shows that it was revised in March 2001. There is a "Rev. 3/01" notation on the bottom left of the document. Accordingly, it is implausible that the applicant received this report card on June 28, 1983. Therefore, this document is without any probative value and credibility as evidence of the applicant's residence in the United States in June 1983.
- The applicant's school enrollment verification form issued by the Santa Ana Unified School District, confirming her enrollment at Lowell Elementary School from November 1981 until June 1982 and September 1982 until June 1983. This document is inconsistent with the documentation the applicant initially furnished with her Form I-687 application. The applicant furnished with her application evidence that she attended Roosevelt Elementary School between 1982 and 1983. The applicant submitted a report card for her attendance at Roosevelt Elementary School during the 1982-1983 school year; a principal's award certificate from Roosevelt Elementary School, dated April 30, 1983; and a certificate of achievement from Roosevelt Elementary School, dated June 14, 1983. Given these inconsistencies, this document is without any probative value and credibility as evidence of the applicant's residence in the United States from November 1981 until June 1983.
- A copy of the applicant's high school identification card from Morse High School issued for the academic year 1988-1989. It should be noted that the applicant's Form I-687 application shows that in 1988 she resided at [REDACTED], Santa Ana, California. Morse High School is located at 6905 Skyline Drive, San Diego, California, approximately 90 miles from Santa Ana.¹ Moreover, this document only serves as evidence of the applicant's residence in the United States during the academic year 1988-1989. The traditional academic year is from September 1988 until June 1989.² Therefore, this document is not relevant to the requisite period.

¹ <http://www.morsehs.com/>

² <http://www.sandi.net/comm/schools/calendars/0708traditional.pdf>

- The applicant's academic transcript from the Santa Ana Unified School District for her attendance at Willard Intermediate School from 1984 until 1986. This document is inconsistent with the documentation the applicant initially furnished with her Form I-687 application. The applicant furnished with her application evidence that she attended Roosevelt Junior School in 1985. The applicant submitted a Student of the Month certificate from Roosevelt Junior School, dated November 9, 1985, and a Student of the Week certificate from Roosevelt Junior School, dated January 28, 1985. Additionally, this document is suspect because the academic years are inconsistent with the Santa Ana Unified School District traditional school calendar.³ The transcript shows that the applicant attended sixth grade during the fall 1984 and the spring 1984 semesters; seventh grade during the fall 1985 and spring 1985 semesters; and eighth grade during the fall 1986 and spring 1986 semesters. The Santa Ana Unified School District traditional school calendar shows that the first semester (fall semester) begins in August and ends in February of the following year. The second semester (spring semester) begins in February and ends in June. Under this traditional calendar, students would have attended sixth grade during the fall 1984 and spring 1985 semesters; seventh grade during the fall 1985 and spring 1986 semesters; and eighth grade during the fall 1986 and spring 1987 semesters. Given these significant discrepancies, this document is without any probative value and credibility as evidence of the applicant's residence in the United States from 1984 until 1986.

In summary, the applicant's corroborating documentation is without any probative value and credibility. The initial documentation the applicant filed with her Form I-687 application shows that she attended Roosevelt Elementary School and Roosevelt Junior School during the requisite period. The documentation the applicant submitted in response to the Form I-72, request for evidence, is inconsistent with her initial evidence. The documentation the applicant submitted in response to the request for evidence shows that she attended Lowell Elementary School and Willard Intermediate School during the requisite period. Moreover, the applicant's documentary evidence contains internal inconsistencies. The applicant submitted report cards from Lowell Elementary School that were issued on dates subsequent to the time period she purportedly attended grade school. Additionally, the applicant submitted a school transcript from Willard Intermediate School with semesters that are inconsistent with the traditional school calendar. By submitting questionable and inconsistent documentation, the applicant has negated her own credibility as well as the credibility of her claim of continuous residence in the United States during the requisite period.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, as well as the inconsistencies and contradictions noted in the record, seriously detract from the credibility of her 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 inconsistencies in the record and the lack of credible supporting documentation, it is concluded

³ <http://www.sausd.k12.ca.us/sausd/site/default.asp>

that 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.