

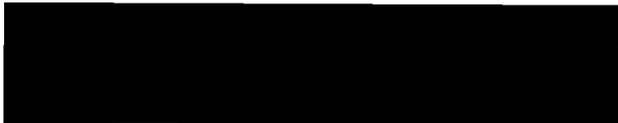


U.S. Citizenship
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FILE: [REDACTED]
MSC-05-305-11240

Office: LOS ANGELES

Date: JUN 19 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. 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, 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, on August 1, 2005. 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. Specifically, the director noted that the applicant's statements at her interview contradicted the information contained in her Form I-687. 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.

The applicant represents herself on appeal. She maintains that she is eligible for temporary resident status, and explains that the contradictions between her application and her statements are due to the errors of her translator. In corroboration of her claim of residence, the applicant submits an affidavit from her translator at her interview wherein he states that there was "miscommunication between [himself] and the officer."

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)(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 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 (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 demonstrate that she resided in the United States for the duration of the requisite period. In this case, the applicant has provided no evidence other than her own contradictory statements and an affidavit from Alberto Ceja, who claims that he did not translate properly.

The AAO will first examine the evidence contained in the Form I-687. The information contained therein reveals that the applicant stated that she was born on December 2, 1969, and that she was first employed as a farm laborer for Two Palms Ranch, Coachella, CA, between June, 1988 and November, 1991. The applicant stated therein that she departed the United States for Mexico on July 5, 1987 and returned on July 10, 1987. The first address listed on the application is [REDACTED], Hawaiian Gardens, CA, where the applicant claimed to have resided between February 1987 and January 1989. Thereafter, the applicant stated that she lived at [REDACTED], Coachella, CA, from February, 1990 and January, 1993, and [REDACTED], Santa Ana, CA from February, 1993 to December, 1996. The applicant claimed to presently reside at [REDACTED] Hawaiian Gardens, CA from February, 1997 to the present. The Form I-687 indicates that the applicant was self-employed as a housekeeper between January, 1992 and May, 1998. Ultimately, the application reveals that the applicant

provided "home care" from March, 1998 to the present. There is no indication if the applicant is self-employed or works for a firm.

During her interview with a Citizenship and Immigration Services (CIS) officer on October 10, 2006, the applicant provided information contrary to that contained in her Form I-687. She stated that she first entered the United States in December, 1981, with her father and mother, when she was approximately 11 years old. However, the first address listed by the applicant is dated from 1987. The applicant stated that she did not attend school, but that she helped her sister with household chores. The applicant claimed further that she lived at the Hawaiian Gardens address from 1981 to the present, whereas the Form I-687 lists a number of different addresses. The applicant also stated that she briefly departed the United States for Mexico in May, 1987 for 25 days to visit her ailing mother, contrary to her Form I-687 which states that she departed the United States in July, 1987 for 5 days. Furthermore, she also stated that her parents remained in the United States until she was almost 20 years old. The AAO notes that the applicant would have turned 20 in December, 1989, allegedly when her parents had already departed the United States.

The AAO observes that these numerous inconsistencies remain unexplained on appeal. The applicant submits her own declaration dated December 2, 2006, and an affidavit from her translator, [REDACTED] in support of her application for temporary resident status. Neither statement provides an adequate explanation for the various contradictions and inconsistencies noted above. The applicant merely states that she initially entered the United States in December of 1981, that she was "close to 20 years old" when she briefly departed the United States, that her translator erred and that the immigration officer did not understand the correct answer. [REDACTED]'s affidavit has no probative value, because it lacks sufficient detail to explain the inconsistencies noted above. Furthermore, the applicant provides no documentary evidence of any kind whatsoever other than her own affirmations to establish the requisite residency.

The AAO observes that neither [REDACTED]'s affidavit nor the applicant declaration on appeal provides sufficient detail that would support the credibility of the information contained therein or render it amenable to verification. For these reasons, both statements can be afforded minimal weight as evidence of the applicant's residence and presence in the United States for the requisite period.

In this case, the applicant has not provided any credible evidence of residence in the United States relating to the requisite period. [REDACTED]'s affidavit and the applicant's declaration are bereft of sufficient detail to support the her claim of residence since 1981; and are inconsistent with her assertions. As noted above, 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 absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the requisite period seriously detracts 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 lack of credible supporting documentation and the applicant's reliance on an affidavit that has been found to have minimal probative value, it is concluded 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.