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FILE: [REDACTED]  
MSC 05 018 10074

Office: LOS ANGELES

Date: JUN 20 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.

For 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, and is now before the Administrative Appeals Office 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. Specifically, the director noted various anomalies that were discovered when Citizenship and Immigration Services (CIS) attempted to contact two affiants for verification of information provided in their respective statements. The director also noted that a number of telephone numbers given by various affiants in their written statements had been disconnected, thereby precluding CIS from verifying certain information. 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 reiterates the claim that she has lived in the United States since prior to January 1, 1982 and provides additional contact information for various affiants.

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 until the date of filing the application. 8 C.F.R. § 245a.2(b)(1).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the alien 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.* 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 demonstrate that she resided in the United States during the requisite time period. Here, the applicant has failed to meet this burden.

The record shows that the applicant previously filed a Form I-485 application seeking to obtain permanent resident status under provisions of Legal Immigration Family Equity (LIFE) Act.<sup>1</sup> Section 245A(a)(2) of the Act and section 1104(c)(2)(B) of the LIFE Act require the applicant to 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 May 4, 1988. The applicant has submitted the following documentation in support of her claimed residence in the United States during this time period:

1. An affidavit dated August 29, 1990 from [REDACTED], the applicant's brother, who claimed that the applicant had lived with him through the date of the affidavit. The affiant provided the applicant's claimed history of residential addresses from 1981 through the date of the affidavit and further claimed that the applicant assumed the role of housekeeper within his residence in exchange for room and board. Although the affiant claimed that the applicant worked from 1985 to 1988, he did not specify any employers. It is noted that [REDACTED]'s statement is inconsistent with the various individuals (discussed below) who claimed to have employed the applicant as their babysitter prior to 1985, when

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<sup>1</sup> The record shows that the District Director, Los Angeles, denied the applicant's Form I-485 LIFE Act application on July 9, 2003. The applicant appealed the director's decision to the AAO, where the appeal was rejected on September 1, 2004 for its untimely filing.

██████████ claimed the applicant provided him with housekeeping services. This affiant also provided a sworn declaration dated May 19, 2003 in which he stated that he claimed the applicant as one of his dependents on his tax returns from 1982 through 1985, all four of which are appended to the sworn statement. It is noted, however, that the probative value of the submitted tax returns is limited. Specifically, ██████████'s tax return for 1982 is photocopied, unsigned, contains an incorrect spelling of the applicant's name, and includes the applicant as one of ██████████'s children. Although the three remaining tax returns are all signed by the claimed preparer of the document, none of the returns are dated and, as with the 1982 tax return, the 1983 tax return also identifies the applicant as one of the child dependents of ██████████ and his wife. Finally, while ██████████ claimed a total of five dependents in his 1985 tax return, he named only four dependents, again identifying the applicant as a child dependent rather than naming her as a dependent other than a child. It is further noted that none of the tax returns is signed or dated by ██████████ and his wife, who purportedly filed the returns jointly with her husband.

2. An affidavit dated August 31, 1989 from ██████████ who provided the applicant's residential addresses from June 1981 through May 1985 and claimed that the applicant was the housekeeper and babysitter for her family "all this time." It is noted that this affiant's statements are inconsistent with information provided by the applicant in her most recent Form I-687. Specifically, the affiant stated that the applicant resided at ██████████, Pacoima, California from June 1981 until 1984. However, in No. 30 of the most recent Form I-687, the applicant stated that she lived at ██████████, Pacoima, California during that time period. Additionally, according to the employment history provided by the applicant in No. 33 of her application, her employment for ██████████ took place from 1987 to 1988, and not since 1981, as claimed by the affiant. In light of these various inconsistencies, this affiant's statements will only be afforded minimal weight as evidence of the applicant's residence in the United States during the statutory time period.
3. A letter dated June 28, 2001 from ██████████, a pastor at Our Lady of the Holy Rosary Church. ██████████ provided the applicant's most recent residential address and further claimed that the applicant has attended the church regularly and has been a registered member of the church since 1982. However, 8 C.F.R. § 245a.2(d)(3)(v) sets forth guidelines for attestations by churches, unions, or other organizations to the applicant's residence. Among the facts that must be included in such attestations are the alien's address at the time of the claimed membership, the basis for the church official's claimed knowledge of the applicant, and the origin of the information to which the church official is attesting. In the present matter, these key factors are absent from ██████████'s attestation. As such, this letter will be afforded only minimal weight as evidence of the applicant's residence in the United States during the statutory period.
4. An employment letter dated July 26, 1990 from ██████████, president of ██████████'s Fashion. Ms. ██████████ stated that the applicant has been employed by her company since February 1988 and provided the applicant's social security number, her hourly wage, and her position title.

However, past employment records are subject to specific regulatory guidelines that are set forth in 8 C.F.R. § 245a.2(d)(3)(i), which require that the employer provide the alien's address at the time of employment, state whether or not the information was taken from official company records, and disclose where records are located and whether the CIS may have access to them. This relevant information was not included in this affiant's employment letter, which, at best, attests to the applicant's residence in the United States since February 1988, only three months prior to the expiration of the statutory period.

5. Sworn declarations dated May 9, 2003 from [REDACTED] and [REDACTED] attesting to the applicant's employment as a babysitter with their respective families. [REDACTED] claimed that she met the applicant in 1983 when she was pregnant with her daughter and that after the birth of her daughter, she employed the applicant as a babysitter for one year; [REDACTED] stated that she and the applicant met in 1982 through a mutual friend and further claimed that she employed the applicant as a babysitter from 1984 to 1986; and [REDACTED] claimed that she met the applicant in 1981 at a family gathering and employed the applicant as a babysitter for one year during an unspecified time period. It is noted that none of the individuals provided the applicant's address at the time the purported employment. Although [REDACTED] and [REDACTED] provided the approximate years during which they claimed to have employed the applicant, [REDACTED] only provided the duration of the alleged employment without specifying either the month or the year during which the purported employment took place. As such, these letters fail to meet the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(i). Even if treated as general attestations of residence, these declarants' statements lack any details about the applicant and the circumstances of her alleged residence in the United States during the statutory period.
6. A letter dated August 16, 2004 from [REDACTED] who claimed to have known the applicant since 1985. [REDACTED] statement has minimal probative value, as it fails to provide the specific circumstances of her acquaintance with the applicant or any detailed information about the applicant's life in the United States during the statutory period.
7. A letter dated July 29, 2004 from [REDACTED] who claimed to have known the applicant since 1983. The only other information provided by [REDACTED] is that at the time they met the applicant resided in Pacoima. [REDACTED] failed to provide the specific circumstances of her acquaintance with the applicant or any detailed information about the applicant's life in the United States during the statutory period. As such, this statement will be afforded minimal weight as evidence of the applicant's residence in the United States during the relevant statutory period.
8. Affidavits dated September 13, 2004 and September 18, 2004 from [REDACTED] and [REDACTED], respectively. Both affiants claimed to have first met the applicant in Mexico. [REDACTED] claimed that he had known of the applicant's residence in the United States since October 1981, while [REDACTED] stated that he had known of the applicant's residence in the United States since 1981 because she lived next door. Neither

affiant provided any details of the events or circumstances of the applicant's residence in the United States during the statutory period. As such, these statements will be afforded only minimal weight as corroborating evidence.

9. An affidavit dated September 21, 2004 from [REDACTED] who claimed that he had met the applicant at church in 1981, and September 2004 letters from [REDACTED], who claimed to have met the applicant in 1981 at a family function in Bakersfield; [REDACTED], who claimed to have met the applicant in 1981; and [REDACTED], who claimed to have met the applicant in 1981 while waiting for service at a clinic. It is noted that everyone except [REDACTED] provided the circumstances of their respective first encounters with the applicant. However, no one provided any details concerning the events and circumstances of the applicant's life during her purported residence in the United States within the statutory period. As such, the affidavit and the three letters will be afforded only minimal weight as evidence corroborating the applicant's claimed period of residence in the United States.

On August 21, 2006, the director denied the application for temporary resident status, noting that Ms. [REDACTED] had been contacted by CIS and that the statement she provided at that time differed significantly from the written statement she provided earlier. Specifically, the director observed that during her telephone conversation with a CIS officer, [REDACTED] claimed that she first met the applicant in 1996 rather than in 1982 as claimed in her written statement. The director further noted that when contacted by telephone, [REDACTED] claimed he had trouble remembering the affiant. In addition, the director noted that a number of affiants failed to provide phone numbers and others provided numbers that were disconnected. **In light of these anomalies, the director questioned the reliability of the remaining supporting documents.** As properly stated by the director, doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

On appeal, the applicant reaffirms her claim of residence in the United States during the statutory period and provides telephone numbers for five individuals whose written statements were previously submitted in support of the applicant's claim. However, this supplemental information is insufficient to cure the deficiencies and inconsistencies noted above.

Additionally, the record shows that there are considerable inconsistencies between the applicant's most recently filed Form I-687 and the Form I-687 provided earlier in the applicant's effort to establish her unlawful residence in the United States during the statutory period. First, with regard to the applicant's residential history in the United States, in the earlier Form I-687, the applicant stated that she resided at [REDACTED], Pacoima, California from 1981 to 1984. However, in the recently filed Form I-687, the applicant claimed that she resided at [REDACTED], Pacoima, California during the same time period. Next, in the recently filed Form I-687, the applicant indicated that she has been affiliated with Our Lady of the Holy Rosary Church from 1982 to the present. However, in the earlier Form I-687, the applicant indicated that she was not affiliated with any churches, clubs, or other organizations. Lastly, with regard to employment history, the applicant indicated in her earlier Form I-687 that she was employed by [REDACTED] as a housekeeper from 1981 to 1985 and for [REDACTED] as a housekeeper from [REDACTED].

1985 to 1988. However, in her most recently filed Form I-687, the applicant provided an entirely different employment history. Specifically, she claimed that from 1981 to 1982 she was employed by [REDACTED] as a babysitter; from 1983 to 1984 she claimed to have been employed by [REDACTED] as a babysitter; from 1984 to 1986 she claimed to have been employed by [REDACTED] as a babysitter; and from 1987 to 1988 she claimed to have been employed by [REDACTED] as a babysitter. Thus, not only did the applicant name two more employers in the more recent application than she named in the earlier application, but the employers and time periods specified in the two applications were entirely distinct. Even though the applicant named [REDACTED] in both applications, the time periods during which she claimed to have been employed by this individual were inconsistent from one application to the other. 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. *Id.* at 591-92.

In summary, the applicant's entire claim rests on letters and affidavits that are either deficient in relevant information or are entirely inconsistent with the applicant's own statements. The absence of sufficiently detailed supporting 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 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 applicant's contradictory statements on her applications and her reliance upon documents with minimal probative value, it is concluded that she has 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-*, 20 I&N Dec. 77. 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.