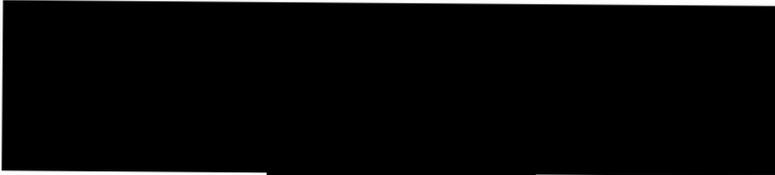


identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



4

FILE: [REDACTED]
MSC-04-349-10538

Office: NEW YORK

Date: MAR 12 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.

A handwritten signature in black ink, appearing to read "D. 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, New York. 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 failed to submit sufficient evidence in response to the Notice of Intent to Deny (NOID) and denied the application for the reasons stated in the NOID. Specifically, the director found 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 found 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. In the decision and the NOID, the director identified several inconsistencies in the applicant's statements, including an inconsistency related to one of the applicant's absences from the United States that fell outside the requisite period.

On appeal, the applicant stated that her testimony in the interview with an immigration officer was that she resided continuously and unlawfully in the United States from January 1, 1982 through May 4, 1988. The applicant stated that she had detailed her three absences during the requisite period. The applicant attempted to explain an apparent discrepancy regarding her description of an absence falling outside the requisite period.

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).

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 September 13, 2004. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant listed the following addresses during the requisite period: [REDACTED] Elmhurst, New York from October 1981 to May 1982; [REDACTED], Elmhurst, New York from June 1982 to September 1983; [REDACTED] Brooklyn, New York from October 1983 to November 1984; [REDACTED] New York, New York from December 1984 to April 1986; and [REDACTED] Ridgewood, New York from May 1986 to January 1989. At part #31 where applicants were asked to list all affiliations or associations,

clubs, organizations, churches, unions, businesses, et cetera, the applicant listed the following organizations: [REDACTED] Sun Social Club from October 1981 to present; and Buddhist Temple of New York from October 1981 to present. At part #32 where applicants were asked to list all absences from the United States since entry, the applicant listed only the following trips to Canada: A trip to see a seriously ill niece during March 1987; and two trips to visit a friend, in January 1987. At part #33 where applicants were asked to list all employment in the United States since entry, the applicant listed the following positions: Cashier for [REDACTED] from October 1981 to November 1982; cashier for [REDACTED] from December 1982 to August 1983; cashier for [REDACTED] from September 1983 to May 1987; and cashier for [REDACTED] from June 1987 to February 1992.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided contemporaneous evidence in the form of a copy of a bank transaction book from Golden Pacific National Bank in New York, New York. This transaction book lists several financial transactions between May 3, 1982 and October 12, 1982. The name listed on the book appears to have been altered to list the applicant's name. Specifically, the pattern printed on the book paper appears to be interrupted in the area surrounding the printed name, as if the original listed name was eradicated and replaced with the applicant's name. In addition, this document fails to list the applicant's address. Aside from the questions regarding the credibility of this document, it constitutes limited evidence indicating that the applicant resided in the United States between May 3, 1982 and October 12, 1982.

The applicant also provided multiple attestations in support of her application for temporary resident status. The applicant provided a group of affidavits from [REDACTED] and [REDACTED]. These affidavits are identical, except for the length of the longest period in which each affiant had not seen the applicant during the requisite period. The affidavits state that the applicant resided in the following locations during the requisite period: Elmhurst, New York from October 1981 to September 1983; Brooklyn, New York from October 1983 to November 1984; New York, New York from December 1984 to April 1986; and Ridgewood, New York from May 1986 to January 1989. These affidavits also state that the affiant has known the applicant as a good friend since prior to January 1, 1982. None of these affidavits provides details regarding how and when the affiant met the applicant, or the affiant's frequency of contact with the applicant. As a result, these affidavits are found to lack sufficient detail to confirm that the applicant resided in the United States during the requisite period.

The applicant provided three identical affidavits from [REDACTED] and [REDACTED]. These affidavits state that the applicant has lived continuously and unlawfully in the United States from before January 1, 1982 until January 15, 1988. None of these affidavits provides details regarding how and when the affiant met the applicant, the applicant's places of residence during the requisite period, or the affiant's frequency of contact with the applicant. As a result, these affidavits are found to lack sufficient detail to confirm that the applicant resided in the United States during the requisite period.

The applicant provided a declaration from [REDACTED] abbot of the American Society of Buddhist Studies. The declaration states that the applicant has been following the "Teachings of Buddha" since December 1981. This declaration fails to confirm that the applicant resided in the United States during the requisite period.

The applicant provided a declaration from [REDACTED], club manager of Sun Social Club, dated November 30, 2005. This declaration states that the applicant has been a club member since October 1981, and the longest period during her residence in which the applicant has not been seen is about 20 weeks. This declaration does not conform to regulatory standards for attestations by churches, unions, or other organizations as stated in 8 C.F.R. § 245a.2(d)(3)(v). Specifically, the declaration does not state the address where the applicant resided during the membership period, does not establish how the author knows the applicant, and does not establish the origin of the information being attested to.

The applicant also provided a declaration from [REDACTED] secretary of the Oriental Cultural Association in New York. The declaration states that the applicant has been a member since March 1982. The declaration also states that the applicant has been residing in the United States continuously and unlawfully from before January 1, 1982 through 1988. This information is inconsistent with the applicant's Form I-687, where she failed to list the Oriental Cultural Association when asked to list all affiliations or associations. This inconsistency calls into question whether [REDACTED] can actually confirm that the applicant resided in the United States during the requisite period.

The record also includes a Record of Sworn Statement in an Administrative Proceeding dated June 17, 1997. The sworn statement indicates that the applicant was asked by the immigration inspector when she came to the United States, and the applicant stated, "Last year, May 1996 I'm not sure of the date." The inspector asked the applicant, "Have you ever been in the United States before?" and the applicant stated, "Yes 1994 or 1995 I'm not so sure." The inspector asked the applicant how many years she had stayed in the United States and the applicant stated, "Roughly around four years." This information is inconsistent with the applicant's statements on her Form I-687 indicating she resided continuously in the United States throughout the requisite period. This inconsistency casts serious doubt on the applicant's claim to meet the residency requirements for temporary resident status.

In denying the application the director noted that the applicant had failed to submit sufficient evidence in response to the NOID and denied the application for the reasons stated in the NOID. Specifically, the director found 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 raised inconsistencies in the applicant's statements, including an inconsistency related to an overseas trip the applicant took outside of the requisite period.

On appeal, the applicant stated that her testimony in the interview with an immigration officer was that she resided continuously and unlawfully in the United States from January 1, 1982 through May 4, 1988. The applicant stated that she had detailed her three absences during the requisite period. The applicant attempted to explain an apparent discrepancy regarding her description of an absence that fell outside the requisite period and is, therefore, not relevant to the current decision.

In summary, the applicant has provided limited contemporaneous evidence of residence in the United States relating to the requisite period for a six-month period in 1982. The applicant submitted two sets of nearly identical affidavits, all of which lack sufficient detail to confirm that she resided in the United States throughout the requisite period. These include affidavits from

[REDACTED], and [REDACTED]. The applicant provided one declaration from the American Society of Buddhist Studies that fails to confirm that she resided in the United States during the requisite period. The applicant provided declarations from [REDACTED] Sun Social Club and the Oriental Cultural Association that do not conform to regulatory standards.

The absence of sufficiently detailed supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts 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 substantial reliance upon documents that are nearly identical to each other and have minimal probative value, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States for the requisite period 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.

It is noted that the applicant's application for voluntary departure was granted on July 11, 1997 until July 25, 1997.

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