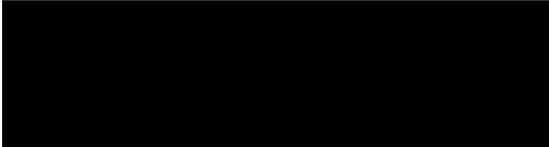


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FILE:   
MSC 05 218 11144

Office: Los Angeles

Date: **MAY 02 2008**

IN RE: Applicant: 

PETITION: 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 [or Records] 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, Los Angeles, California and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director determined that the applicant had not demonstrated that she had continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that she attempted to file a Form I-687, Application for Status as a Temporary Resident, with the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS) in the original legalization application period between May 5, 1987 and May 4, 1988. Therefore, the district director concluded that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and section 245A of the Immigration and Nationality Act (Act) and denied the application.

On appeal, the applicant asserts that she has submitted sufficient evidence to support her claim of residence in this country for the requisite period. The applicant declares that any discrepancies relating to the dates of her absence from the United States when she visited her ill mother during the requisite period were the result of her faulty memory. The applicant includes documents in support of her appeal.

An applicant for temporary residence 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 Immigration and Nationality Act (Act), 8 U.S.C. § 1255a(a)(2) and 8 C.F.R. § 245a.2(b).

An alien applying for adjustment to temporary resident status must 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 and 8 C.F.R. § 245a.2(b)(1).

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, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. Paragraph 11, page 6 of the CSS Settlement Agreement and paragraph 11, page 10 of the Newman Settlement Agreement.

An alien applying for adjustment of status has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, 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 including affidavits is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and, identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

The regulation at 8 C.F.R. § 245a.2(d)(3)(v) states that attestations by churches, unions, or other organizations to the applicant's residence by letter must: identify applicant by name; be signed by an official (whose title is shown); show inclusive dates of membership; state the address where applicant resided during membership period; include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; establish how the author knows the applicant; and, establish the origin of information contained in the attestation.

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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his or 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 a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on May 6, 2005. 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 [REDACTED] in Los Angeles, California from May 1980 through at least the end of the legalization application period on May 4, 1988. In addition, at part #32 of the Form I-687 application where applicants were asked to list all absences from the United States since January 1, 1982, the applicant indicated that she was absent from this country on one occasion from February 20, 1987 to March 8, 1987 when she traveled to Mexico to see her sick mother.

With the Form I-687 application filed on May 6, 2005, the applicant included another separate Form I-687 application dated July 2, 1990. While the applicant's testimony regarding her address of residence, employment, and absence from the United States during the requisite period on the Form I-687 application dated July 2, 1990 corresponds to her testimony on the Form I-687 application filed on May 6, 2005, it must be noted that the applicant admitted that she had given birth to her daughter [REDACTED] in Mexico on January 26, 1986 at part #32 of the Form I-687 application dated July 2, 1990 (the difference in the numbering of parts on the two separate Form I-687 applications is explained by the fact that the application was revised as of April 30, 2004) where applicants were asked to provide information relating to their immediate family. The fact that the applicant failed to disclose her absence from this country in 1986 on either of the Form I-687 applications contained in the record undermines the credibility of her claim of residence in the United States since prior to January 1, 1982 as well as her own overall credibility.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted a "Corroborative Affidavit" that is signed by [REDACTED]. Ms. [REDACTED] stated that she had known the applicant since she came to live in her neighborhood in May 1980. Ms. [REDACTED] claimed that she and the applicant had been friends since and visited each other regularly. Ms. [REDACTED] noted that she had given the applicant a ride to Tijuana, Mexico when she departed the United States to see her ill mother on February 20, 1987 and then subsequently picked her up at the bus station in Los Angeles, California when she returned to this country on March 8, 1987. Although Ms. [REDACTED] attested to the applicant's absence from the United States in 1987, she failed to provide any other specific and verifiable testimony relating to the applicant's residence in this country during the requisite period despite claiming to have been a friend of the applicant who visited with her regularly since May 1980.

The applicant provided a letter containing the letterhead of St. Bernard Church in Los Angeles, California that is signed by Reverend [REDACTED]. In his letter, [REDACTED] stated that to best of his recollection the applicant and her family were members of this church and she had been attending mass at this church since the 1980's. However, [REDACTED] failed list his position

at St. Bernard's church and did not include the applicant's address of residence during that period that she was a member of this church as required under 8 C.F.R. § 245a.2(d)(3)(v).

The applicant included a letter containing the letterhead and photocopied business cards of [REDACTED] in Los Angeles, California that is signed by [REDACTED]. Mr. [REDACTED] listed his position as manager and declared that he had known the applicant since 1981, as she was a longtime and valued customer who had purchased all kinds of jewelry including earrings and chain sets. Nevertheless, Mr. [REDACTED]'s testimony is of limited probative value as he failed to provide any bills, receipts, or business records to demonstrate that the applicant made any purchases at his store either during the requisite period or thereafter.

The applicant submitted a letter containing the letterhead and photocopied business card of C.J. Fashions, Inc., in Los Angeles, California that is signed by Joseph Shaberi who listed his position as president. Mr. [REDACTED] stated that he employed the applicant as a sewing machine operator from November 1984 to January 2000 and that she had been a hard working, loyal, and trustworthy employee. However, Mr. [REDACTED] failed to provide either the applicant's address of residence during her employment with C.J. Fashions, Inc., or pertinent information relating to the availability of company records as required by 8 C.F.R. § 245a.2(d)(3)(i). Further, Mr. [REDACTED] failed to attest to the applicant's residence in this country from prior to January 1, 1982 up through November 1984.

The applicant provided an affidavit signed by [REDACTED] who stated that she had personal knowledge that the applicant resided in Los Angeles, California since May 1980 because she was a good friend of the applicant's family and had visited their home often. Ms. [REDACTED] claimed that she was aware the applicant was forced to leave the United States to travel to Mexico to see her ill mother on February 20, 1987. Ms. [REDACTED] noted that the applicant was front-desked (informed that she was ineligible when she attempted to apply for legalization in the original application period from May 5, 1987 to May 4, 1988) by the Service as a result of this absence. Ms. [REDACTED] asserted that she accompanied the applicant when she submitted a Form I-687 application and supporting documents at the Service's Legalization Office on Soto Street in Los Angeles, California in July 1990. While Ms. [REDACTED] testified that she was a good friend of the applicant's family and had often visited their home in Los Angeles, California since May 1980, she failed to indicate how she dates their initial acquaintance.

The applicant included an affidavit that is signed by [REDACTED]. Ms. [REDACTED] declared that she had personal knowledge that the applicant resided in Los Angeles, California since May 1980 because she had been a neighbor of the applicant and her family since their arrival in this country. Ms. [REDACTED] contended that she assisted the applicant in preparing a Form I-687 application in July 1990. Ms. [REDACTED] recalled that the applicant was extremely happy after she returned from filing the Form I-687 application at the Service's Legalization Office on Soto Street in Los Angeles, California. Although Ms. [REDACTED] claimed to have been the applicant's neighbor in Los Angeles, California since May 1980, she failed to provide any specific and verifiable testimony to substantiate the applicant's claim of residence in the United States for the requisite period.

The applicant submitted a photocopied receipt for \$450.00 rent paid by the applicant for apartment [REDACTED] at Paloma Courts in Los Angeles, California on April 1, 1982. However, the applicant testified that she lived at [REDACTED] in Los Angeles, California during the entire requisite period on both Form I-687 applications contained in the record without indicating that she had lived in apartment #6 at this address. The fact that the applicant failed to list any apartment number in her address of residence for the period in question diminishes the credibility of this document.

The applicant provided a photocopied receipt dated February 4, 1984 from Denesy Studios in Los Angeles, California that listed [REDACTED] with address at [REDACTED] as the purchaser of a variety of photographs for \$73.20. However, this address did not match that address listed by the applicant as her sole address of residence in this country during the requisite period on both of the Form I-687 applications contained in the record. This discrepancy brings into question the credibility of this receipt.

The applicant included a photocopied appointment card from the Los Angeles Regional Family Planning Council, Inc., indicating that she was scheduled to appear for her annual examination on an unspecified day in April of 1985.

The applicant submitted four photocopied customer receipts for money orders from the United States Postal Service (USPS), two of which are dated November 21, 1986 and the remainder dated December 4, 1987 and April 8, 1988, respectively. The applicant also provided a photocopied receipt for registered mail from the USPS dated September 10, 1987. These five receipts all listed the applicant's address as [REDACTED] in Los Angeles, California. However, this address did not correspond to that address listed by the applicant as her sole address of residence in this country during the requisite period on both of the Form I-687 applications contained in the record. This conflict brings into question the credibility of these five receipts.

The record shows that the applicant appeared for an interview relating to her Form I-687 application at CIS' District Office in Los Angeles, California on August 19, 2005. The notes of the interviewing officer reflect that the applicant admitted under oath that she had been absent from the United States on two separate occasions. The applicant acknowledged that she traveled to Mexico from January 15, 1986 to February 10, 1986 and again from February 20, 1987 to March 8, 1987. The applicant testified that she had given birth to a child when she traveled to Mexico in 1986. The applicant also provided a separate sworn statement written in her own hand in her native language of Spanish in which she declared that she departed to Mexico on January 15, 1986 and returned to this country on February 10, 1986 and then departed again to Mexico on February 20, 1987 and returned to the United States on March 8, 1987. As previously discussed, the fact that the applicant failed to list the absence that occurred from January 15, 1986 to February 10, 1986 on either of the Form I-687 applications contained in the record diminishes her credibility as well as the credibility of her claim of residence in the United States since prior to January 1, 1982.

In the notice of intent to deny issued on September 6, 2005, the district director questioned the veracity of the applicant's claimed residence in the United States since prior to January 1, 1982 by noting that she had failed to submit sufficient evidence to meet her burden of proof in establishing her eligibility to adjust to temporary residence. The applicant was granted thirty days to respond to the notice.

In response, the applicant submitted a statement in which she reiterated her claim of residence in the United States since May of 1980. The applicant asserted that she had submitted sufficient evidence to demonstrate her residence in this country for the requisite period. The applicant declared that she does not possess any additional documentation to support her claim of residence in this country since prior to January 1, 1982 because of her status as an undocumented alien. While it is acknowledged that it may be difficult to obtain supporting documentation relating to a period when the applicant was purportedly residing in this country as an undocumented alien, such status is insufficient to explain the fact that the evidence in the record lacks sufficient detail and verifiable information to corroborate the applicant's claim of residence in the United States for the period in question.

The district director determined that the applicant had failed to submit sufficient evidence to demonstrate that she had continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that she attempted to file a Form I-687 application in the original legalization application period from May 5, 1987 to May 4, 1988. Consequently, the district director concluded that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and section 245A of the Act and denied the application on October 3, 2005. Although the district director also determined that the applicant's was statutorily ineligible as a result of her two absences from this country, this determination must be considered as erroneous because a review of section 245A of the Act finds no support for such a finding.

On appeal, the applicant provides a letter that is written in Spanish and signed by [REDACTED]. The letter is accompanied by a certified translation as required by 8 C.F.R. § 103.2(b)(3). [REDACTED] states that he recommended the immediate hospitalization of the applicant's mother for the treatment of severe pneumonia and internal bleeding on May 10, 1987. [REDACTED] notes that the applicant's mother remained hospitalized until her release on May 20, 1987, at which time the applicant paid medical and hospital bills amounting to two thousand five hundred pesos. However, the testimony of [REDACTED] is of limited probative value as it was not accompanied by any corresponding medical records.

The applicant submits a new "Corroborative Affidavit" that is signed by [REDACTED], the same individual who previously provided the same type of affidavit. Ms. [REDACTED] repeats her prior testimony that she had known the applicant since she came to live in her neighborhood in May 1980. Ms. [REDACTED] again claims that she and the applicant had been friends since and visited each other regularly. Ms. [REDACTED] notes that she had given the applicant a ride to Tijuana, Mexico when she departed the United States to see her ill mother on May 20, 1987 and then subsequently picked

her up at the bus station in Los Angeles, California when she returned to this country on June 8, 1987. Although [REDACTED] attests to the applicant's absence from the United States in 1987, she fails to provide any other relevant and verifiable information regarding the applicant's residence in this country during the requisite period despite claiming to have been a friend of the applicant who visited with her regularly since May 1980.

The applicant asserts that she has submitted sufficient evidence to support her claim of residence in this country for the requisite period. The applicant declares that any discrepancies relating to the dates of her absence from the United States when she visited her ill mother during the requisite period were the result of her faulty memory. The applicant claims that after consulting with the doctor who treated her mother during this illness she was able to determine that the dates of this absence were from May 20, 1987 to June 8, 1987 rather than February 20, 1987 to March 8, 1987 as she had previously testified. The applicant submits a "Form for Determination of Class Membership in *CSS v. Meese*" in which she also revises the dates of her absence from May 20, 1987 to June 8, 1987. A review of the record reveals that the applicant [REDACTED], [REDACTED], and [REDACTED] all previously testified that the applicant departed the United States to travel to Mexico to see her ill mother on February 20, 1987. While the applicant's faulty memory could explain how she made a mistake regarding the dates of her absence, it cannot explain how both [REDACTED] and [REDACTED] could also make the same mistake. Therefore, the applicant's statements on appeal regarding her revision in the dates of her absence from this country in 1987 cannot be considered as a reasonable explanation for the change in her testimony as well as the testimony of [REDACTED].

The affidavits submitted in support of the applicant's claim of residence in the United States for the requisite period lack specific detail and verifiable information to substantiate the applicant's claim of residence in this country since prior to January 1, 1982. The various receipts submitted by the applicant in support of her claim of residence raise serious questions regarding the credibility of such documents as the receipts list addresses of residence that do not match the addresses the applicant claimed to have lived during the period in question. More importantly, the applicant damaged her own credibility and the credibility of her claim of residence in this country by offering contradictory and conflicting testimony regarding her number of absences from this country during the requisite period and the dates of such absences.

The absence of sufficiently detailed supporting documentation and the conflicting testimony provided by the applicant himself seriously undermines the credibility of the supporting documents, as well as the credibility of the applicant's claim of residence in this country for the period in question. Pursuant to 8 C.F.R. § 245a.2(d)(3), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. The applicant has failed to submit sufficient credible documentation to meet his burden of proof in establishing that he has resided in the United States since prior to January 1, 1982 to May 4, 1988 by a preponderance of the evidence as required under both 8 C.F.R. § 245a.2(d)(3) and *Matter of E-M-*, 20 I&N Dec. 77 (Comm. 1989).

Given the applicant's reliance upon supporting documents with minimal probative value and her own conflicting testimony, 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 May 4, 1988 as required under section 245A(a)(2) of the Act. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act.

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