

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 05 252 11479

Office: LOS ANGELES

Date: MAY 05 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 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, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined 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 of May 5, 1987 to May 4, 1988. The director based her determination on the applicant's admission that she first entered the United States in December 1982. Therefore, the director determined that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and denied the application.

On appeal, the applicant asserts she has lived in the United States since 1981, and that her husband was approved after going through the same process.

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 Immigration and Nationality Act (Act), 8 U.S.C. § 1255a(a)(2).

An applicant 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, 8 U.S.C. § 1255a(a)(3).

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. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

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. *See* 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 (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 from prior to January 1, 1982, through the date she attempted to file a Form I-687 application with the Service in the original legalization application period of May 5, 1987, to May 4, 1988.

The record reflects that the applicant filed a Form I-485, Application to Register Permanent Resident or Adjust Status, on December 10, 2001, under CIS receipt number MSC 02 071 65184. The District Director, Los Angeles, California, denied the application on December 22, 2004. The appeal of that denial is not at issue in this decision.

However, the applicant alleged on a form to determine class membership, which she signed under penalty of perjury on July 18, 1990, that she first entered the United States on December 20, 1981, when she crossed the border without inspection. Documentation submitted by the applicant to establish her continuous residence in the United States includes the following:

1. Copies of envelopes addressed to the applicant at [REDACTED] in San Pedro, California, bearing canceled postmarks of December 27, 1981, April 23, 1982, and May 16, 1984. Several postmarks are partially illegible.
2. A July 17, 1990, sworn statement from [REDACTED], in which she certified that she had known the applicant since 1981, and was aware that she had lived in the United States since that time.
3. A copy of a December 7, 2003, letter from the Movimiento Cristiano Pentecostes Internacional “El Rey De Paz,” which certified that according to church records, the applicant had been a member of the church since January 1982. The letter, signed by [REDACTED] as secretary,

indicated that the church previously operated under the name "Assembly of Pentecostal Church of Jesus Christ" prior to changing its name in 1998.

4. A January 29, 1990, sworn letter from [REDACTED] in which she confirmed that she had employed the applicant as her housekeeper since January 1982.
5. A July 17, 1990, sworn statement from [REDACTED] "a reverend of a church," in which he verified that the applicant shared his household at [REDACTED] in San Pedro from January 1982 to 1985. In an undated statement, [REDACTED] stated that he was the pastor of Assembly of Pentecostal Church of Jesus Christ, and that he had personally known the applicant since January 1982.
6. A July 17, 1990, affidavit from [REDACTED] in which she stated that, to her personal knowledge, the applicant lived at [REDACTED] in San Pedro from January 1982 to December 1985. We note that the address differs from that at which the applicant and [REDACTED] alleged she lived during this period.
7. A copy of a check dated August 29, 1982, made payable to [REDACTED]

During the course of her January 25, 2006, interview, the applicant signed a sworn statement in which she stated that she first entered the United States in December 1982. 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. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

We find that the applicant has submitted sufficient evidence to resolve this inconsistency. Not only did she submit affidavits and statements from those who attested to her residency in the United States prior to December 1982, she also submitted objective evidence in the form of envelopes with canceled postmarks dated prior to that date. Accordingly, we find that the applicant has submitted sufficient evidence to show that she was unlawfully in the United States prior to January 1, 1982.

However, the record does not establish that the applicant resided continuously in the United States for the required period.

The regulations at 8 C.F.R. § 245a.2(h) provides:

*Continuous residence.* (1) For the purpose of this Act, an applicant for *temporary resident status* shall be regarded as having resided continuously in the United States if, at the time of filing of the application:

- (i) No single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982 through the date the application for

temporary resident status is filed, unless the alien can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed.

The applicant stated on her Form I-687 application, which she signed under penalty of perjury on May 19, 2005, that she had been absent from the United States from December 1985 to March 1986 because she was pregnant and returned to Mexico to give birth to her child. According to the applicant's I-485 application, her daughter was born in Mexico on December 24, 1985.

The applicant failed to identify this absence on her previous applications. However, when questioned about the birth of her child during a July 14, 1993, interview, the applicant stated that she returned to the United States in January 1986 following the child's birth. The applicant submitted no objective documentation to establish her departure and return to the United States in December 1985 and 1986. *Matter of Ho*, 19 I&N Dec. at, 591-92. Her failure to voluntarily identify this absence in prior applications suggests, however, that she was aware that she had exceeded the time for which she could remain outside of the United States without immigration consequences.

An absence of more than 45 days must be "due to emergent reasons." Although this term is not defined in the regulations, *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988) holds that *emergent* means "coming unexpectedly into being." The applicant has not indicated that her absence from the United States to have her baby was prolonged because of an emergent reason. Accordingly, her visit to Mexico from December 1985 to March 1986, a period of at least 65 days (from December 24, 1985, to March 1, 1986) interrupted her "continuous residence" in the United States.

The applicant has, therefore, failed to establish that she resided in the United States in an unlawful status continuously from before January 1, 1982, through the date that she attempted to file a Form I-687 in the original legalization application period of May 5, 1987, to May 4, 1988.

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