

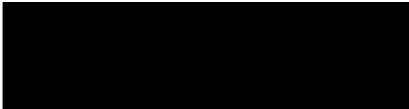
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U.S. Citizenship  
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Services

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FILE: [REDACTED]  
MSC-05-130-11599

Office: LOS ANGELES

Date: **NOV 21 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 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.

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting 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 Field Office 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. The director denied the application, finding 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.

On appeal, the applicant asserts that she has established her unlawful residence for the requisite time period. She addresses some of the inconsistencies noted by the director.

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).

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) 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 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 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, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 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. *See* 8 C.F.R. § 245a.2(d)(6). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

Even if the director has some doubt as to the truth, if the applicant 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 (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. The documentation that the applicant submits in support of her claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of several affidavits and letters; a copy of a check from 1986; a shop receipt from 1987; several receipts and check stubs from 1987 and 1988, many in the name of [REDACTED]. It is also noted that the record of proceedings contains several receipts from Continental Express Co. that do not contain the applicant's name. The AAO has reviewed each document in its entirety to determine the applicant's eligibility; however, the AAO will not quote each witness statement in this decision.

The record contains the following evidence:

- An affidavit from [REDACTED] who indicates that she met the applicant in 1981 and that the applicant is also known as [REDACTED]. She provides no additional relevant details.

- A second affidavit from [REDACTED] dated September 29, 1990. In this affidavit, Ms. [REDACTED] indicates that the applicant has resided in Los Angeles, California since December 1981 and that their mothers were friends. She offers no additional relevant details.
- An affidavit from [REDACTED] who indicates that she is the applicant's cousin and that the applicant came to the United States in December 1981. He provides no additional relevant details.
- An affidavit from [REDACTED] dated December 3, 2004, who indicates that he has known the applicant since 1981. He states that the applicant was employed by his business, "[REDACTED] California" from 1981 until 1994. In addition, the applicant's mother was employed by [REDACTED] as a housekeeper from 1977 until 1984. [REDACTED] submitted a second affidavit, dated October 1, 1990 in which he stated that the applicant was employed by him as a Machine Operator from February, 1982 until the present. This inconsistency was noted in the denial. On appeal, the applicant does not offer independent objective evidence or explanation of the discrepancy in dates. She merely states that the first date of her initial employment, December 1981 was correct and that the subsequent letter from [REDACTED] indicating that the applicant commenced her employment with the company in February 1982 was incorrect. It is noted that the applicant was 14 years old in 1981.
- An affidavit from [REDACTED] who indicates that the applicant is his cousin's daughter. He states that the applicant told him that she entered the United States illegally through the San Ysidro border crossing in December 1981. He further states that the applicant lived with her employer during the week and with him at his home on the weekends. It is noted that the applicant does not list her employer's address as her home address on her Form I-687 application or in the affidavit submitted by her employer, Mr. [REDACTED]
- An affidavit from [REDACTED] who indicates that she has personal knowledge that the applicant has resided in the United States since December 1981 and that they met at a Christmas party. She indicates that the applicant occasionally cared for her children after their initial meeting. She offers no additional relevant details.
- An affidavit from [REDACTED] who indicates that she has personal knowledge that the applicant has resided in the United States since December 1981. She offers no additional relevant details.
- An affidavit from [REDACTED] dated September 22, 1990, in which the affiant indicates that she has known the applicant since May 1982 and that they have been neighbors since 1982. She offers no additional relevant details.

- An affidavit from [REDACTED] who indicates that the applicant resided with her at [REDACTED], California on weekends from December 1981 until 1984, and that she lived with her full time at [REDACTED] California from 1984 until 1988. This conflicts with the applicant's Form I-687 application in which the applicant states that she began living at the So. Indiana address in June of 1984 until 1987. On appeal, the applicant attempts to explain the discrepancy by stating that she lived with [REDACTED] at his address from 1981 until 1984 when she went to live permanently with her aunt, [REDACTED]. She indicates that her mother babysat for [REDACTED] children and that during the week she and her mother lived with the [REDACTED].
- An affidavit from [REDACTED] who indicates that the applicant lived in her home from December 1981 until June 1984 in Hacienda Heights, California.
- A receipt for an electronics purchase from 1985 for [REDACTED].
- A California Department of Motor Vehicles permit dated August 14, 1985 in the name [REDACTED].
- A certified check made out to [REDACTED] and dated October 1986.
- A school identification from 1986-87 in the name [REDACTED].
- A Midas Muffler Shop receipt in the name of [REDACTED] dated August 1987.
- A California Department of Motor Vehicles receipt dated August 1985 and a Driver's License from 1988.

As indicated above, the applicant has submitted numerous affidavits from individuals who do little more than state that they met the applicant in 1981. Most of the affiants fail to state where the applicant resided during the requisite period; establish in detail that the author knows the applicant and has personal knowledge of the applicant's whereabouts during the requisite period; establish the origin of the information being attested to; or provide any further details evidencing a 24-year relationship.

While the applicant has submitted some evidence of her continuous residency from 1985 through 1988, the record does not contain credible evidence of both her entry prior to January 1, 1982 and her continuous residency for the duration of the requisite period. Furthermore, the applicant has attempted to explain the noted inconsistencies, however, she has failed to submit any independent objective evidence which resolves the inconsistency. 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). 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.

Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that she is eligible for the benefit sought.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and 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.