

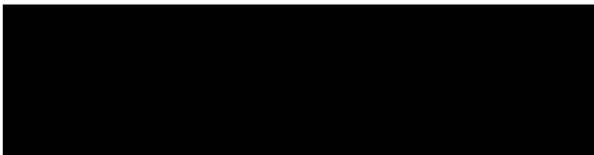
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U.S. Department of Homeland Security  
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U.S. Citizenship  
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Office: LOS ANGELES

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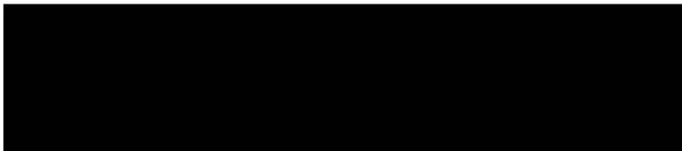
Applicant:



APPLICATION:

Application for Temporary Resident Status under Section 245A of the  
Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office on your appeal. You no longer have a case pending before this office. If your appeal was sustained or the matter was remanded for further action, your file has been returned to the office that originally decided your case, and you will be contacted. If your appeal was dismissed or rejected, your file has been sent to the National Benefits Center. You are not entitled to file a motion to reopen or reconsider your case.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The District Director, Los Angeles, denied the application for temporary resident status made 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). 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 (the 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 during the requisite period.

On appeal, counsel submitted additional evidence and asserted that the evidence of record is sufficient to support the applicant's claim of eligibility.

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 (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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 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.

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 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.

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.

On the instant Form I-687 application, which the applicant signed on January 17, 2005, the applicant was required to provide an exhaustive list of her residences in the United States since her first entry. As part of that residential history, the applicant stated that, from June 1981 to January 1988 she lived at [REDACTED] in Calexico, California. The applicant further stated that she lived from August 1989 to September 2000 at [REDACTED] in Los Angeles California. Although she was required to do so, the applicant did not state where she lived from February 1988 to July 1989.

The applicant was also required to provide an exhaustive list of all of her employment in the United States since January 1, 1982. As part of that employment history, the applicant stated that she worked from July 1981 to November 1987 as a field worker for [REDACTED] Farm Labor Contractor. The applicant did not list any employment from December 1987 to December 1989.

The applicant was required, on that application, to provide an exhaustive list of her absences from the United States since January 1, 1982. The applicant stated she went to Mexico from December 1987 to January 1988 for the purpose of "residence." During her legalization

interview on January 1, 2006, the applicant amended her history of absences, stating that she went to Mexico from May 1982 to June 1982 and during May of 1989. The applicant stated that the purpose of the first trip was "to take [her] daughter back [to Mexico]."

The pertinent evidence in the record is described below.

- The record contains a form employment verification letter, dated July 14, 1991, from [REDACTED] of Gardena, California. Ms. [REDACTED] stated that the applicant worked at [REDACTED] in Gardena from January 10, 1985 to June 20, 1986. The declarant did not state her position at that address, if any, or that of the applicant. The declarant did not state any basis for her asserted knowledge of the applicant's employment history. Further, this office notes that, in her ostensibly exhaustive report of her employment history in the United States, the applicant did not claim ever to have worked at that address. During 1985 the applicant claimed to have worked only for [REDACTED].
- The record contains an employment verification letter, dated June 23, 1982, from [REDACTED], personnel representative for the B.P. John Furniture Company. Ms. [REDACTED] stated that the applicant worked for that company as a general cleaner from April 16, 1982 to June 23, 1982. Again, the applicant did not claim that employment on her Form I-687.
- The record contains pay stubs issued by [REDACTED] to [REDACTED] presumably the applicant, for the weeks ending April 30, 1982, May 7, 1982, and June 4, 1982.
- The record contains an employment verification letter, dated January 18, 2005, on the letterhead of [REDACTED], farm labor contractor. That letter is signed by [REDACTED] Mr. [REDACTED] stated he was a general manager for [REDACTED] from 1975 to 1987, and that the applicant harvested produce for [REDACTED] from January 1982 to April 1986. Mr. [REDACTED] stated that the company paid all of its crew members in cash, did not keep records, and ceased operating in September 1987. Mr. [REDACTED] stated that the information he was providing was based solely on his own memory. This office notes that the applicant claimed, on the Form I-687 application, to have worked for that company from July 1981 to November 1987, rather than from January 1982 to April 1986. Further still, this office questions how a former employee of [REDACTED] is able to provide employment verification letters on the [REDACTED] company letterhead. Yet further, this office questions Mr. [REDACTED] ability to accurately recall, roughly 20 years later, when the applicant worked for that firm.

The employment verification letters from [REDACTED] and [REDACTED] do not conform to the requirements of C.F.R. § 245a.2(d)(3)(i), which is set out above. Although they will be considered pursuant to 8 C.F.R. § 245a.2(d)(6), they will be accorded less

evidentiary weight than they would have been accorded had they conformed to the requirements of the applicable regulation.

- The record contains undated form declarations from [REDACTED] and [REDACTED], who stated that they are friends of the applicant and they know that she lived at [REDACTED] from August 3, 1981 to “present.”
- The record contains a form declaration dated July 16, 1991 from [REDACTED], who stated that he is a friend of the applicant, that he lives at [REDACTED] and that the applicant lived there from 1985 (the year of their acquaintance) to “Now.”
- The record contains a form declaration from [REDACTED] of Los Angeles, California. The declarant stated that she has known the applicant since January 10, 1988 to the present date, July 14, 1989.

Although those declarations are headed “Affidavit of Witness,” and contain standard notary’s attestations, the attestations on the declarations of [REDACTED] and [REDACTED] are blank. [REDACTED], rather than a notary, filled in the attestation on his own declaration. The declarations contain no indication that they were sworn to or subscribed before notaries. Those letters are not, therefore, affidavits and will not be accorded the additional evidentiary weight accorded to affidavits and other sworn statements. Further, the affiants did not provide their telephone numbers, which renders the affidavits less verifiable. Further still, this office notes that the applicant stated that she did not move to the [REDACTED] Avenue, not Street, address until August 1989, eight years after Mr. [REDACTED] and Mr. [REDACTED] stated that she lived there, and four years after Mr. [REDACTED] stated that she lived there.

- The record contains an affidavit, dated July 15, 2005, from [REDACTED] of Gardena, California. Ms. [REDACTED] stated that she has known the applicant since 1985, when they worked in the same factory. This office notes that the applicant claimed to have worked as a farm laborer during 1985, rather than in a factory.
- The record contains another affidavit, dated February 16, 2006, also from [REDACTED] of Gardena, California. In that affidavit [REDACTED] stated that she met the applicant at a party at [REDACTED] in Los Angeles, California. She stated that she was then selling interior decoration items for Home Interiors and Gifts of Gardena, California, and that the applicant agreed shortly thereafter to help her in that business. This office notes that the applicant did not claim, on the Form I-687 application, to have worked in sales, but to have worked in agriculture during that period. Further, [REDACTED]’s 2006 affidavit, in which she stated that she and the applicant worked together in sales, conflicts with [REDACTED]’s 2005 affidavit, in which she stated that they worked together in a factory.

Each of the documents listed above conflicts in one or more ways with the information the applicant provided on her Form I-687 application, as is described above. In addition, the two affidavits from [REDACTED] conflict with each other.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, the applicant must resolve any inconsistencies in the record with competent, independent, objective evidence. Attempts to explain or reconcile such inconsistencies, absent competent objective evidence sufficient to demonstrate where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). These various inconsistencies cast doubt not only on the evidence containing the conflicts, but on all of the applicant's evidence and all of her assertions.

- The record contains a receipt showing that the applicant sold 280 lbs. of "Loose Corrugated" to City Fibers Inc. in Los Angeles, California on March 4, 1982.
- The record contains a receipt issued by an unidentified business. The item the applicant tendered is written on the receipt but is illegible. Although that receipt may indicate that it was issued on June 8, 1987, the year of that receipt appears to have been altered.
- The record contains a photocopy of a receipt that appears to have been issued to "Isabel" for purchases from Home Interiors and Gifts on February 2, 1989. Whether that receipt was issued in the United States is unclear. Further, the date on that receipt appears to have been altered.

The record contains a near duplicate of the February 2, 1989 receipt. The differences between those receipts is that on this second copy the date June 20, 1987 has been added, and the date below, that previously read February 2, 1989 appears altered.

That the applicant submitted evidence that has clearly been altered casts yet more doubt on the evidentiary value of her evidence and the veracity of her assertions.

- The record contains two rent receipts that purport to have been issued to the applicant on September 1, 1982 and November 1, 1982 for rent paid for a dwelling at [REDACTED] in Calexico, California. This office notes that the applicant did not claim, on the instant Form I-687 application, to have lived at that address. In an explanatory note, the applicant stated that this address was one of two addresses where employees could stay while working in the fields. This office notes that the form of those two receipts is identical, indicating that they may have come from the same pad of forms. The September 1, 1982 receipt, however, is number [REDACTED], and the November 1, 1982 receipt is number [REDACTED]. Why the receipts would have been used in reverse order is unclear.
- The record contains a form declaration, dated July 29, 1991, from [REDACTED] of Los Angeles, California. Mr. [REDACTED] stated that he took the applicant, who is his sister, to the bus station in Los Angeles, California on December 15, 1987, and that she

went by bus to Mexico and remained there until January 7, 1988, when he met her at the bus station.

Although an ostensible notary placed her signature and seal on that document, she did not attest either that she ascertained [REDACTED] identity or that she administered an oath to him. That declaration is not, therefore, an affidavit, and will not be accorded the additional evidentiary weight accorded to affidavits and other sworn documents. Further, that an ostensible notary is unfamiliar with the form of a standard notary's attestation raises the suspicion that the person who signed and sealed that document is not, in fact, a notary.

- The record contains a previous Form I-687 application that the applicant signed during October 1990. On that application the applicant stated that she worked from August 1981 to September 1987 for [REDACTED], and from September 1987 to "Present" in "Maintenance." This office notes that the employment history on that previous Form I-687 bears no resemblance to that on the instant Form I-687.

The record contains no other evidence pertinent to the applicant's residence in the United States during the salient period.

In a Notice of Intent to Deny (NOID), dated September 2, 2005, the director stated that the applicant failed to submit evidence sufficient to demonstrate her entry into the United States prior to January 1, 1982, and continuous residence during the requisite period. The director granted the applicant thirty days to submit additional evidence.

In response the applicant submitted additional copies of evidence previously submitted.

In the Notice of Decision, dated January 1, 2006, the director denied the application, finding that the applicant had failed to demonstrate her continuous residence in the United States during the requisite period. The director also noted various discrepancies between the applicant's assertions and her evidence.

On appeal, counsel submitted a brief; the February 16, 2006 affidavit from [REDACTED] and an affidavit, dated February 16, 2006, from the applicant.

In her affidavit, the applicant stated (1) that she first entered the United States during 1981 and stayed at [REDACTED] in Los Angeles, California, for about two months; (2) that beginning in June 1981 she began living at [REDACTED], where she supported herself by cleaning houses and babysitting; (3) that beginning in September 1981 she worked for [REDACTED] at a farm owned by [REDACTED], which position she held for nine months, while living at [REDACTED], (4) that beginning in April of 1982 she worked for [REDACTED].

for approximately three months cleaning furniture, during which time she lived on First Street, at an address she cannot now recall, after which she returned to [REDACTED] where she again worked as a housekeeper and babysitter; (5) that from September 1982 to April 1983

she worked for [REDACTED] in Calexico again, during which time she lived at [REDACTED] (6) that she continued to work in Calexico during the harvest season from September through April but lived at [REDACTED] in Los Angeles during the off-season from April through September; (7) that during April 1985 she met [REDACTED], with whom she began to work during the off-season selling household interior decorations; and (8) that she ceased working at [REDACTED]'s farm during January 1988, and lived at [REDACTED] in Los Angeles until September 2000, supporting herself by babysitting and housekeeping.

In his brief, counsel asserted that the applicant's explanation clarifies any perceived inconsistencies between the applicant's assertions on the Form I-687 application and the evidence she submitted to support her claim. Counsel stated that the applicant was discouraged from providing the omitted details by the notary who prepared the application. Counsel further stated that the applicant could have explained the "alleged inconsistencies" at her interview, had she then been questioned about them.

This office notes that, as per *INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984) and *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980); counsel's assertions are not evidence. The record contains no evidence to support counsel's assertion that the applicant's provision of inaccurate residential and employment histories on her application was caused by the poor advice of a notary.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate entry into the United States prior to January 1, 1982, and continuous residence during the requisite period.

Notwithstanding counsel's assertions to the contrary, the residential and employment histories the applicant provided on the instant Form I-687 application conflicts, in the numerous ways described above, with the evidence the applicant provided. On appeal, the applicant provided different residential and employment histories, consistent with her evidence, but at odds with the version of her history that she provided on the Form I-687.

The applicant asserted employment and residential histories on the I-687, accompanied by inconsistent evidence. She subsequently submitted amended employment and residential histories to match the evidence previously submitted. These conflicting histories raise serious questions of credibility. Again, this suspicion must be assuaged with objective evidence, rather than merely a feasible explanation. The applicant's assertions on appeal are not the independent, objective evidence contemplated by *Matter of Ho*, 19 I&N Dec. 582, 591-92 as necessary to reconcile the applicant's conflicting versions of her history.

Further, neither the employment history the applicant provided on the instant Form I-687 nor the employment history the applicant offered on appeal is consistent with the third version of her employment history that the applicant claimed on the previous Form I-687, which the applicant signed during October 1990.

Yet further, as was noted above, a receipt from Home Interiors and Gifts appears to have been altered prior to its initial submission, and was certainly altered prior to its second submission. Even if the applicant's evidence and her assertions were consistent, this would be sufficient reason, in itself, to discount the evidentiary value of the applicant's submissions and deny the application.

The evidence must be evaluated not by the quantity of evidence alone but by its quality. 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 its amenability to verification. Given the paucity of credible supporting documentation the applicant has failed to meet her burden of proof and failed to establish continuous residence in an unlawful status in the United States during the requisite period. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act. The application was correctly denied on this basis, which has not been overcome on appeal. The appeal will be dismissed.

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