



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent identity information
invasion of personal privacy

FUBLIC COPY

L1



FILE: [REDACTED]
MSC 05 160 10670

Office: LOS ANGELES

Date: OCT 15 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:



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 "Robert P. 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 Director, Los Angeles. The matter is now before the Administrative Appeals Office 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 effort and asserted that the record demonstrates that the application should be approved.

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.

On the Form I-687 application, which the applicant signed on February 12, 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 November 1981 to May 1988 she lived at [REDACTED] in Anaheim, California.

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 from December 1981 to May 1988 she was self-employed in a mail order business. The applicant did not describe that employment further.

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 that she went to the Philippines for family visits from December 1984 to January 1985 and from January 1987 to February 1987.

The pertinent evidence in the record is described below.

- The record contains a form affidavit, dated August 18, 2005, from [REDACTED] of San Diego, California. The affiant did not state when he met the applicant, but stated that the applicant visited him and his wife, now deceased, who was the applicant’s aunt, a few times between 1981 and 1988. He stated that he knows that the applicant lived at [REDACTED] in Anaheim, California from November 1981 to May 1988, but did not state the basis of that knowledge.

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

With the application the applicant submitted no evidence in support of her claim that she resided continuously in the United States during the requisite period. In a Notice of Intent to Deny (NOID), dated July 20, 2005, the director stated that the applicant failed 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. The applicant did not respond to that notice.

In the Notice of Decision, dated January 12, 2006, the director denied the application based on the reason stated in the NOID, that the applicant had not demonstrated that she resided continuously in the United States during the requisite period.

On appeal, counsel submitted the August 18, 2005 affidavit of _____ and stated that the applicant has no other evidence to submit.

Counsel cited *Woodby v. INS*, 385 U.S. 276, 281 (1966) for the proposition that “the government must satisfy its burden of proof by a showing of, ‘clear, unequivocal and convincing evidence . . .’ which is ‘more than a mere preponderance of the evidence.’” This office notes that counsel quoted the West Publishing Company’s discussion of the case, found in the headnotes, rather than the opinion itself. Further, the discussion in that case makes clear that it is addressing the burden of proof in a deportation hearing. That opinion did not discuss the standard of proof applicable to adjudications of petitions and applications for immigration benefits. The regulation at 8 C.F.R. § 245a.2(d)(5), as was noted above, makes explicit that the applicant in this matter bears the burden of proof, and is obliged to prove her case pursuant to the preponderance of the evidence standard.

Counsel also cited *Garrovillas v. INS*, 156 F.3d 1010 (9th Cir. 1988) for the proposition that “The absence of a showing of an explicit adverse credibility finding means that the alien’s testimony is accepted as true.” Counsel cited to no particular portion of the opinion in that matter, and this office is unable to find any portion of it that supports, either explicitly or implicitly, counsel’s proposition.

Further, the instant case does not rely on a finding that the applicant’s testimony and her representations are, *per se*, incredible. Rather, the issue in this proceeding is whether the applicant has furnished sufficient credible evidence to support her claim of having entered the United States prior to January 1, 1982, and continuously resided in the United States during the requisite period.

The only evidence the applicant provided in support of claim is the affidavit of _____, submitted on appeal. Mr. _____ stated that the applicant visited him and his wife during 1981 and 1988. That is insufficient to establish continuous residence in the United States during the interim. He stated that he knows that the applicant lived at _____ in Anaheim, California from November 1981 to May 1988, but did not state whether he ever visited the applicant there, whether he ever saw any documentary evidence of her residence there, whether she or someone else told him contemporaneously that the applicant lived at that address, or whether she or someone else told him more recently. The affiant’s conclusory statement that he knows that the applicant lived in Anaheim is insufficient to support the applicant’s claim of continuous residence in the United States during the requisite period.

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.