

... preventing and ...
prevent clearly unwarranted
invasion of personal privacy

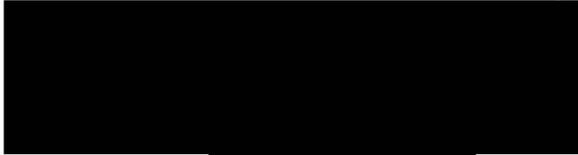
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

4



FILE: MSC-05-253-15144

Office: HOUSTON

Date: OCT 16 2008

IN RE: Applicant:



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.


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, Houston. 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 determined that the applicant had failed to meet her burden of proof by a preponderance of the evidence that she resided in the United States for the requisite period. The director specifically noted that although counsel for the applicant requested 30 additional days in which to submit a rebuttal to the Notice of Intent to Deny (NOID), dated November 29, 2006, the service did not receive any response from either counsel or the applicant. The director denied the application, finding that the applicant had not met her burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, counsel asserts that the director failed to analyze the evidence presented and failed to use due diligence in verifying the affiant's statements. Counsel also asserts that the affidavits submitted are credible and verifiable, and that the applicant has met her burden of proof. Counsel did not submit any additional evidence.

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. See 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 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).

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.* at 80. 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, 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 or petition.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his 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 Supplement to Citizenship and Immigration Services (CIS) on June 10, 2005.

In an attempt to establish continuous unlawful residence in the United States since prior to January 1, 1982, the applicant submitted the following attestations:

- An affidavit dated April 8, 2005 from [REDACTED] in which she stated that she has known that the applicant arrived in the United States in the fall of 1978, and that thereafter, her parents moved to Houston, Texas in the spring of 1981. She also stated that she babysat for the applicant every so often when her parents would go out in the evening, and that she has maintained contact with the applicant throughout the years. This statement is inconsistent with what the applicant stated under oath during her interview with immigration officials where she stated that her father brought her to the

United States, and that her mother lived in Mexico. It is also noted that the affiant fails to specify the period in which she babysat for the applicant and where. She also fails to demonstrate that the statements concerning the applicant's initial entry into the United States are based upon first hand knowledge of the applicant's whereabouts and circumstances of her presence in the country. Because the affidavit contradicts statements made by the applicant and because it is lacking in detail, it can be afforded little weight in establishing that the applicant resided in the United States during the requisite period.

- An affidavit dated April 28, 2005 from [REDACTED] in which he stated that he knows that the applicant arrived in Lufkin, Texas on or about the fall of 1978. He further stated that the applicant resided with her father, who is the affiant's brother-in-law. He stated that the applicant moved to Houston, Texas in February of 1981, and that his wife would baby sit for the applicant while her parents ran errands in the afternoons. The affiant stated that his wife would invite the applicant over to spend the night at their home on a monthly basis, and that they kept in close contact with the applicant over the years. This statement is inconsistent with what the applicant stated under oath during her interview with immigration officials where she stated that her father brought her to the United States, and that her mother lived in Mexico. It is also noted that the affiant fails to specify the period in which his wife babysat for the applicant and where. He also fails to demonstrate that the statements concerning the applicant's initial entry into the United States are based upon first hand knowledge of the applicant's whereabouts and circumstances of her presence in the country. Because the affidavit contradicts statements made by the applicant and because it is lacking in detail, it can be afforded little weight in establishing that the applicant resided in the United States during the requisite period.
- An affidavit dated April 28, 2005 from [REDACTED] in which he stated that he met the applicant through her father, [REDACTED], who was his co-worker, in 1980. He further stated that the applicant's father invited him to a Christmas party and that he continued to see the applicant at family gatherings. Here, the affiant fails to specify the frequency in any given year with which he saw and communicated with the applicant or the nature of their relationship, the applicant being a three-year-old child. The affiant also fails to specify places where the applicant resided during the requisite period to support her claimed continuous residence in the United States since prior to January 1, 1982.
- An affidavit dated May 9, 2005 from [REDACTED] in which he stated that he has known of the applicant's presence in the United States since the summer of 1981, and that he met the applicant through her father, [REDACTED], who was his close friend and co-worker at the time. The affiant also stated that he was invited by the applicant's father to a family barbeque at his home and that he has kept in touch with the applicant and her father through the years. He further stated that he would see the applicant at the Immaculate Church on Capitol and Harrisburg every Sunday for Mass. Here, the

affiant's statements are inconsistent with what the applicant indicated on her I-687 application at part #31 where she was instructed to list all affiliations and associations with churches or religious groups and she indicated "NONE." This inconsistency calls into question the credibility of the affiant's statement. Because the affiant's statement is in conflict with what the applicant indicated on her Form I-687 application, doubt is cast on the authenticity of the document.

- An affidavit dated April 28, 2005 from [REDACTED] in which he stated that he met the applicant through her father [REDACTED] who was his co-worker in 1982. He further stated that he met the applicant at a family gathering that her father had invited him to, and that he would continue to see the applicant through the years at other family gatherings. Although the affiant stated that he met the applicant through her father, he failed to specify when or where the introduction took place. The affiant fails to specify the frequency in any given year with which he saw and communicated with the applicant or the nature of their relationship, the applicant being a five-year-old child. The affiant fails to specify places where the applicant resided during the requisite period to support her claimed continuous residence in the United States since prior to January 1, 1982. Because the affidavit is lacking in detail, it can be afforded only minimal weight in establishing that the applicant resided in the United States during the requisite period.
- An affidavit dated April 28, 2005 from [REDACTED] in which he stated that he met the applicant through her father, [REDACTED] in the summer of 1981 when Mr. [REDACTED] invited the affiant and his family to the applicant's birthday party. He also stated that he has seen her on various occasions and has kept in touch with the applicant through the years. Here, the affiant fails to specify the frequency in any given year with which he saw and communicated with the applicant or the nature of their relationship, the applicant being a four year old child. The affiant also fails to specify places where the applicant resided during the requisite period to support her claimed continuous residence in the United States since prior to January 1, 1982. Because the affidavit is significantly lacking in detail, it has little probative value and can be afforded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

In denying the application the director noted that the evidence submitted by the applicant was not sufficient to establish her eligibility for the immigration benefit sought, and that she failed to respond to the NOID as requested.

On appeal, counsel asserts the applicant's claim of eligibility for temporary resident status. Counsel also asserts that the director failed to analyze the evidence presented and failed to use due diligence in attempts to contact the affiants. Counsel asserts that the affidavits submitted are credible and verifiable. Counsel does not submit any additional evidence on appeal.

In the instant case, the applicant has failed to meet her burden of proof by a preponderance of the evidence that she continuously resided in an unlawful status in the United States since prior to

January 1, 1982. The applicant has failed to overcome the grounds in the denial raised by the director. The affidavits submitted by the applicant are inconsistent with statements she made during her immigration interview and on her Form I-687 application. The affidavits also lack detail essential to support the applicant's claim of unlawful residence in the United States since January of 1981. For these reasons, the affidavits can be accorded only minimal weight in establishing that applicant resided in the United States throughout the requisite period.

Although the applicant claims to have resided in the United States since she was a one-year-old, she has provided neither school records nor immunization records to substantiate such claim. She has also failed to provide any evidence from any responsible adult or guardian to indicate the circumstances of how she survived in the United States during her childhood and during the requisite period.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of this claim. 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 amenability to verification. Given the applicant's contradictory statements and her reliance upon documents with minimal probative value, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States for the requisite period 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.