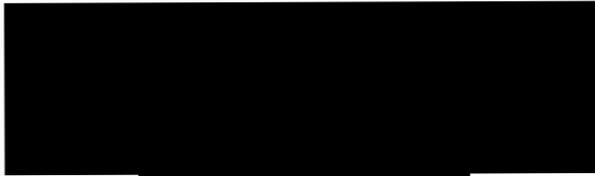


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FILE: [REDACTED]  
MSC-05-274-12301

Office: LOS ANGELES

Date: **OCT 16 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. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

  
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 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 because the applicant had failed to prove by a preponderance of the evidence that she had continuously resided in the United States during the requisite period. Specifically, the director found that the affidavits submitted by the applicant lacked sufficient detail. The director also noted a number of inconsistencies between the applicant's testimony and the information contained in the affidavits.

On appeal the applicant states that the director erred in failing to issue a Notice of Intent to Deny. The applicant also states that she has provided sufficient evidence to satisfy her burden of proof.

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)(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) 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 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).

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 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, 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.

As noted above, the applicant states that she never received a NOID. Pursuant to paragraph 7, page 4 of the CSS Settlement Agreement and paragraph 7, page 7 of the Newman Settlement Agreement, the director is required to issue a NOID before denying an application for class membership. Here, the director did not deny the application for class membership. Instead, the director adjudicated the Form I-687 application on the merits. Therefore, the director was not required to issue a NOID prior to issuing the final decision in this case.

Thus, the only issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that she resided in the United States for the duration of the requisite period. Here, the applicant has not met her burden of proof.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on January 9, 2006. At part #32 of the application, which asked applicants to list all residences in the United States since their first entry, the first period of residence listed by the applicant began in 1980. The applicant also testified before an immigration officer that she first entered the United States in August of 1980 and has resided in the United States continuously since that time.

In support of her application, the applicant submitted photocopies of pages from a passport issued to her by the Government of Mexico in August of 1980. One page of this passport contains a B-2 visa stamp issued to the applicant on August 6, 1980. This page also bears an admission stamp which shows that the applicant was admitted to the United States in B-2 status on August 28, 1980. The AAO finds that the applicant has established, by a preponderance of the evidence, that she entered the United States prior to January 1, 1982.

Of course, it is not sufficient for the applicant to show entry into the United States prior to 1982, she must also show, by a preponderance of the evidence, that she resided continuously in the United States throughout the requisite period. The applicant has failed to meet her burden of proof.

There is evidence in the record which indicates that the applicant was not residing in the United States throughout the requisite period. Specifically, the record contains a copy of the applicant's marriage certificate and copies of her children's birth certificates. According to the marriage certificate, the applicant was married in Mexico City, Mexico on April 15, 1982. The marriage certificate lists the applicant's residence as [REDACTED]. This appears to be a foreign address. The fact that the applicant's marriage certificate lists her as having a foreign residence during the requisite period is a material inconsistency which detracts from the credibility of the applicant's claims.

The applicant also submitted copies of her children's birth certificates. Specifically, the applicant submitted the following:

- The birth certificate of [REDACTED]. The date of birth is May 17, 1983 and the date of registration is June 20, 1983. The applicant's residence is listed on this document as [REDACTED].
- The birth certificate of [REDACTED]. The date of birth is March 28, 1984 and the date of registration is April 27, 1984. The applicant's residence is listed on this document as [REDACTED].
- The birth certificate of [REDACTED]. The date of birth is April 5, 1986 and the date of registration is May 16, 1986. The applicant's residence is listed on this document as [REDACTED].
- The birth certificate of [REDACTED]. The date of birth is April 7, 1989 and the date of registration is May 8, 1989. The applicant's residence is listed on this document as [REDACTED].

These birth certificates indicate that the applicant resided outside of the United States during the requisite period. The information in these birth certificates conflicts with the information provided by the applicant on her Form I-687 application as well as her sworn testimony before an immigration officer. These are material inconsistencies which seriously detract from the credibility of the applicant's claims.

The applicant also submitted the following affidavits in support of her application:

- An affidavit from [REDACTED] dated May 9, 2005. The affiant states that she met the applicant in August of 1980 at the affiant's mother's house. The affiant claims to have knowledge of the applicant's residence in the United States throughout the requisite period because she would visit the applicant and the applicant's sister in Commerce City, and because "[w]e have kept in touch through the years." This affidavit lacks probative details such as how the affiant dates her initial acquaintance with the applicant or the nature and frequency of her contact with the applicant during the requisite period. Given

these deficiencies, this affidavit will be given only minimal weight as evidence of the applicant's residence in the United States during the requisite period.

- An affidavit from [REDACTED] dated May 9, 2005. The affiant states that the applicant is her niece and that the applicant came to visit her in 1980 following her arrival in the United States. The affiant states that she knows that the applicant resided continuously in the United States throughout the requisite period because the applicant attended her children's birthday parties and she and the applicant have visited each other through the years. This affidavit lacks probative details such as how the affiant dates her initial acquaintance with the applicant or the nature and frequency of her contact with the applicant during the requisite period. Given these deficiencies, this affidavit will be given only minimal weight as evidence of the applicant's residence in the United States during the requisite period.
- An affidavit from [REDACTED] dated May 9, 2005. The affiant states the applicant visited him at his house in August of 1980. The affiant states that she knows that the applicant resided continuously in the United States throughout the requisite period because he and the applicant saw each other at family gatherings. The affiant does not provide any details regarding the nature and frequency of his contact with the applicant during the requisite period. Given this lack of probative detail, this affidavit will be given only minimal weight as evidence of the applicant's residence in the United States during the requisite period.
- An affidavit from [REDACTED] dated May 5, 2005. The affiant states that she met the applicant in 1980 at the affiant's mother's house. The affiant claims to have knowledge that the applicant resided in the United States during the requisite period because she and the applicant would see each other at family functions. The affiant does not provide any details regarding the nature and frequency of her contact with the applicant during the requisite period. Given this lack of probative detail, this affidavit will be given only minimal weight as evidence of the applicant's residence in the United States during the requisite period.
- An affidavit from [REDACTED] dated May 6, 2005. The affiant states that he met the applicant in December of 1981 at a party. The affiant claims to have knowledge that the applicant continuously resided in the United States during the requisite period because "we would see each other at different function like our kids' birthday parties and family events." The affiant fails to provide any details regarding the nature or frequency of his contact with the applicant during the requisite period. Given this lack of probative detail, this affidavit will be given only minimal weight as evidence of the applicant's residence in the United States during the requisite period.
- An affidavit from [REDACTED] dated May 5, 2005. The affiant states that he has known the applicant "since 1981 when she came looking for employment." However, it is noted that the only employment listed by the applicant on her Form I-687 application

was as a baby sitter from 1984 until 1989. The affiant claims to have knowledge that the applicant resided continuously in the United States throughout the requisite period because he and the applicant “would see each other in the neighborhood and she visited me several times.” This affidavit lacks probative details such as how the affiant dates his initial acquaintance with the applicant or the nature and frequency of his contact with the applicant during the requisite period. Given these deficiencies, this affidavit will be given only minimal weight as evidence of the applicant’s residence in the United States during the requisite period.

- An affidavit from [REDACTED] dated May 13, 2005. The affiant states that she met the applicant in 1981 at St. Anthony Claret Catholic Church. The affiant claims to have knowledge that the applicant resided continuously in the United States throughout the requisite period because she would see that applicant on Sundays after mass. As noted by the director, the applicant testified that she lived with the affiant from 1984 until 1987. However, the affiant failed to mention this in her affidavit. Further, the affiant failed to provide details regarding the nature of her contact with the applicant during the requisite period. Given these deficiencies, this affidavit will be given only minimal weight as evidence of the applicant’s residence in the United States during the requisite period.
- An affidavit from [REDACTED] dated May 9, 2005. The affiant states that she met the applicant in 1980 when the applicant moved into the same apartment building at [REDACTED] in Anaheim, California. This conflicts with information provided by the applicant on her Form I-687 application in that she indicated that she did not reside at [REDACTED] until 1981. The affiant claims to have knowledge of the applicant’s residence in the United States during the requisite period because the applicant rented a room where the affiant lived. However, the affiant fails to provide probative details such as the frequency and nature of her contact with the applicant during the requisite period. Given these deficiencies, this affidavit will be given only minimal weight as evidence of the applicant’s residence in the United States during the requisite period.

An affidavit from [REDACTED] dated May 6, 2005. The affiant states that he met the applicant on December 12, 1981 in the waiting room at a doctor’s office. The affiant states that, following that initial meeting, he and the applicant became friends and attended each other’s family functions. The affiant does not provide any details regarding the nature and frequency of his contact with the applicant during the requisite period. Lacking such probative details, this affidavit will be given only minimal weight as evidence of the applicant’s residence in the United States during the requisite period.

In summary, the applicant has not provided sufficient evidence in support of her claim of residence in the United States relating to the entire requisite period. The absence of sufficiently detailed supporting 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

contradictory information in the record and the applicant's 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.