

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

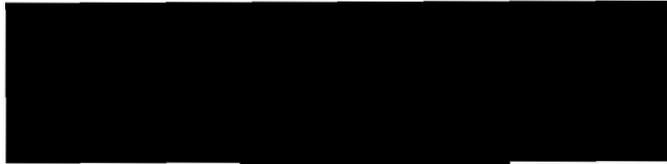
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



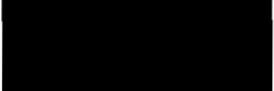
U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

L1



FILE:



Office: LOS ANGELES

Date: OCT 28 2008

MSC-06-095-10461

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, 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 determined 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. 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, the applicant asserts that the inconsistencies in her testimony are a result of the length of time that has passed since her previous interview and her two departures. The applicant asserts that there was more than one reason for her departures. The applicant states that in 1984 she returned to Mexico because she was pregnant, having problems with her husband, and she did not have health insurance. The applicant states that this departure does not disrupt her continuous physical presence. The applicant states that she initially returned to Mexico in 1987 when her mother was bitten by a dog. The applicant states that since her mother was fine, she relaxed with her mother and family in Mexico. The applicant asserts that Tomasa Tellex registered the birth of the applicant's daughter, [REDACTED] Sandoval, in Mexico. The applicant asserts that she has been denied an opportunity for a fair review, which is a violation of her equal protection rights under the Constitution.

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 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 her 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 January 3, 2006. At part #30 of the Form I-687 application where applicants are asked to list all residences in the United States since first entry, the applicant showed that during the requisite period she resided at [REDACTED] Fullerton, California from January 1981 to 1987 and [REDACTED] Fullerton, California from June 1987 to January 1993. At part #33, she showed that during the requisite period she was employed with [REDACTED] in Fullerton, California as a babysitter/domestic employee from January 1981 to April 1984; as a babysitter/domestic employee in “different

areas” from January 1985 to December 1986; and with Tristar Plastic in Anaheim, California as a machine operator from September 1987 to 1997 (month not specified).

The applicant submitted with her application a letter from [REDACTED] of Tri Star Plastics, Inc., dated June 6, 1990. Mr. [REDACTED] states in his letter that the applicant has been employed with Tri Star Plastics since September 17, 1987 as an operator at the rate of \$4.45 an hour. This letter fails to provide [REDACTED]’s position title and the origin of the information he has attested to. The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that employer letters must include the applicant’s address at the time of employment; duties with the company; whether or not the information was taken from official company records; where such records are located; and whether CIS may have access to the records. Mr. [REDACTED]’s letter fails to comply with these delineated guidelines. Given these deficiencies, this letter is of little probative value as evidence of the applicant’s residence in the United States in 1987.

The record shows that on June 17, 1993, the applicant submitted a Form I-687 for a determination of her CSS class membership. The applicant concurrently filed with this application, a Form for Determination of Class Membership in *CSS v. Meese*. The applicant indicated on this initial Form I-687 that she resided during the requisite period at: [REDACTED] Fullerton, California from January 1981 to 1985; Oxnard, California from 1986 to May 1987; and [REDACTED], Fullerton, California from June 1987 to present. However, the applicant did not show Oxnard, California as a residence on the instant Form I-687. This inconsistency undermines the credibility of the applicant’s claim of continuous residence in the United States during the requisite period. Furthermore, the applicant signed the initial Form I-687 on June 5, 1993 and indicated her address on that date as [REDACTED], Fullerton, California. However, the instant Form I-687 shows that on June 5, 1993, she was residing at [REDACTED] Fullerton, California. Although this residence is outside the requisite period, the inconsistency is relevant to this proceeding because it undermines the applicant’s credibility. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Id.*

The applicant submitted the following documentation with her initial Form I-687:

- Copies of the applicant’s 1987 and 1988 Form W-2, Wage and Tax Statements, for her employment with Tri-Star Plastics, Inc. These forms show the applicant’s address as [REDACTED], Placentia, California. However, the applicant did not list this address as a residence on either of her Form I-687 applications. Without a reasonable explanation from the applicant, this inconsistency lessens the probative value of these documents. As a result, they are of minimal probative value as evidence of the applicant’s residence in the United States in 1987 and 1988.

- A copy of the applicant's 1988 Form 1040A, United States Individual Tax Return. This form shows the applicant's home address as [REDACTED], Fullerton, California. However, the instant Form I-687 shows that the applicant did not reside at this address until January 1993. This inconsistency draws into question the credibility of this document. As a result, it is without any probative value as evidence of the applicant's residence in the United States during the requisite period.
- A fill-in-the-blank affidavit from [REDACTED], dated May 31, 1990. Ms. [REDACTED] states in her affidavit that she met the applicant through her good friend, [REDACTED], and she always sees her. Ms. [REDACTED] states that she has personal knowledge of the applicant's residence at: Placentia, California from January 1981 to December 1985; Anaheim, California from December 1985 to January 1988; and Fullerton, California from February 1988 to present. This information is inconsistent with the applicant's instant application. The applicant indicated on the instant Form I-687 that she resided in Fullerton, California from January 1981 until June 1993. Furthermore, the affidavit fails to indicate how [REDACTED] dated her initial acquaintance with the applicant. It also does not illustrate the frequency of her contact with the applicant in the United States during the requisite period. Given these deficiencies, this affidavit is without any probative value as evidence of the applicant's residence in the United States during the requisite period.
- A fill-in-the-blank affidavit from [REDACTED], dated May 31, 1990. Ms. [REDACTED] states in her affidavit that the applicant lived with her and babysat her children from January 1981 to April 1984. Ms. [REDACTED] states that she has personal knowledge of the applicant's residence at: Placentia, California from January 1981 to December 1985; Anaheim, California from December 1985 to January 1988; and Fullerton, California from February 1988 to present. As stated above, this information is inconsistent with the applicant's instant application. The applicant indicated on the instant Form I-687 that she resided in Fullerton, California from January 1981 until June 1993. Furthermore, the affidavit does not indicate how [REDACTED] first became acquainted with the applicant, and how she dated their initial acquaintance. Given these deficiencies, this affidavit is without any probative value as evidence of the applicant's residence in the United States during the requisite period.
- A fill-in-the-blank affidavit from [REDACTED], dated June 11, 1990. Ms. Andrade states in her affidavit that she met the applicant at a park in Anaheim, California in 1981. Ms. [REDACTED] states that she has personal knowledge of the applicant's residence at: Placentia, California from January 1981 to December 1985; Anaheim, California from December 1985 to January 1988; and Fullerton, California from February 1988 to Present. As stated above, this information is inconsistent with the applicant's instant application. The applicant indicated on the instant Form I-687 that she resided in Fullerton, California from January 1981 until June 1993. Furthermore, the affidavit fails to indicate how [REDACTED] dated her initial acquaintance with the applicant. It also does not illustrate the frequency of her contact with the applicant in the United States during the requisite period.

Given these deficiencies, this affidavit is without any probative value as evidence of the applicant's residence in the United States during the requisite period.

- A letter from \_\_\_\_\_ of Tri-Star Plastics, Inc., dated August 1, 1989. \_\_\_\_\_ states in his letter that the applicant has been employed with Tri-Star Plastics as a machine operator since September 17, 1987. As with \_\_\_\_\_'s June 6, 1990 letter (discussed above), this letter fails to provide \_\_\_\_\_ position title and the origin of the information he has attested to. The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that employer letters must include the applicant's address at the time of employment; duties with the company; whether or not the information was taken from official company records; where such records are located; and whether CIS may have access to the records. \_\_\_\_\_'s letter fails to comply with these delineated guidelines. Given these deficiencies, this letter is of little probative value as evidence of the applicant's residence in the United States in 1987.

On January 11, 2007, the director issued a Notice of Denial to the applicant. The director determined that the applicant was not discouraged from filing an application during the original legalization application period.<sup>1</sup> The director noted that the applicant was interviewed for temporary resident status on January 11, 2007. The director stated that during this interview, the applicant testified that she was outside of the United States from January 15, 1984 to February 10, 1984 because she did not want her husband to take her children away from her. The director stated that the applicant then testified that she departed the United States on May 1, 1987 because her mother was bitten by a dog. The director noted that this information is inconsistent with the applicant's testimony in 1993 during her interview for CSS class membership. The director stated that during this interview, the applicant testified that she departed in 1984 to give birth to her daughter and she departed in 1987 for a vacation. The director noted that according to the birth certificate of the applicant's daughter, \_\_\_\_\_ the applicant registered her daughter's birth in Mexico on March 7, 1984. The director determined that based on these inconsistencies, the applicant's testimony not credible. The director concluded that the applicant failed to meet her burden of proof by a preponderance of the evidence that she has continuously resided in the United States during the requisite period.

The record shows that the applicant furnished \_\_\_\_\_ Birth Certificate (Acta De Nacimiento) and a letter from the Civil Registry (Registro Civil). In the denial notice, the director referred to this birth certificate in her determination that the applicant registered \_\_\_\_\_ birth in Mexico on March 7, 1984. However, the record does not contain certified English translations of either of these documents. Because the applicant failed to submit certified translations of the documents, the AAO cannot issue a finding on this issue.

---

<sup>1</sup> Although the director determined that the applicant was not discouraged from filing an application during the original legalization application period, he did not deny the instant application based on the applicant's failure to establish class membership. Instead, the director treated the applicant as a class member and adjudicated the Form I-687 application on the merits.

*See* 8 C.F.R. § 103.2(b)(3). Therefore, the director's determination that the applicant was in Mexico on March 7, 1984 is withdrawn from the record.

On appeal, the applicant asserts that the inconsistencies in her testimony are a result of the length of time that has passed since her previous interview and her two departures. The applicant asserts that there was more than one reason for her departures. The applicant states that in 1984 she returned to Mexico because she was pregnant, having problems with her husband, and she did not have health insurance. The applicant states that this departure does not disrupt her continuous physical presence. The applicant states that she initially returned to Mexico in 1987 when her mother was bitten by a dog. The applicant states that since her mother was fine, she relaxed with her mother and family in Mexico. The applicant asserts that Tomasa Tellex registered the birth of the applicant's daughter, [REDACTED] in Mexico. The applicant asserts that she has been denied an opportunity for a fair review, which is a violation of her equal protection rights under the Constitution.

The applicant's assertions on appeal address the basis for the director's denial. However, they fail to overcome an inconsistency in the record regarding her purported absence from the United States in 1987. The applicant indicated on her initial Form I-687 (filed for a determination of her CSS class membership on June 17, 1993) that she was outside the United States from January 1984 to February 1984 and December 15, 1987 to January 12, 1988. The applicant was interviewed for a determination of her CSS class membership on September 21, 1993. The adjudication officer's interview notes show that the applicant testified that she was outside the United States from January 1984 to February 1984 and December 1987 to January 1988. This information is inconsistent with the applicant's testimony on the instant Form I-687 application.<sup>2</sup> The applicant was interviewed for temporary resident status pursuant to the CSS/Newman Settlement Agreements on January 11, 2007. The adjudication officer's interview notes show that the applicant testified that she was outside of the United States from January 15, 1984 to February 10, 1984 and from May 1, 1987 to May 21, 1987. The director cited to these absences in her denial notice. On appeal, the applicant did not identify the May 1, 1987 departure as a misprint or a mistake in her testimony. This inconsistency undermines the credibility of the applicant's claim of continuous residence in the United States during the requisite period as well as the applicant's own credibility.

In summary, the applicant has failed to provide credible, reliable and probative evidence of her residence in the United States during the entire requisite period. The applicant has been given the opportunity to satisfy her burden of proof with a broad range of evidence. *See* 8 C.F.R. § 245a.2(d)(3). The applicant submitted as evidence of her residence in the United States during the requisite period, various affidavits and employer letters. As stated, the majority of these documents lack significant detail and a number of them contain information that is inconsistent with the applicant's instant application. Of these documents, only the two employer letters from

---

<sup>2</sup> At part #32 of the instant Form I-687, the applicant indicated that she would provide information on her absences from the United States during the interview.

of Tri-Star Plastics, Inc. were found to have any probative value. Mr. [REDACTED] states in his letters that the applicant has been employed with Tri-Star Plastics since September 17, 1987. However, the probative value of Mr. [REDACTED] letters is minimal because they fail to comply with the regulatory guidelines for employer letters at 8 C.F.R. § 245a.2(d)(3)(i). The applicant also furnished copies of her 1987 and 1988 Form W-2, Wage and Tax Statements, for her employment with Tri-Star Plastics, Inc. However, the probative value of these forms is also minimal because they bear a residential address that the applicant did not provide on her Form I-687. Furthermore, the applicant's employment with Tri-Star Plastics does not cover the entire requisite period.

Pursuant to 8 C.F.R. § 245a.2(d)(6), the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. Since the applicant's documentation is, at best, of little probative value, she has not furnished sufficient evidence to meet her burden of proof in this proceeding. Moreover, the inconsistency between the applicant's instant Form I-687 and her initial Form I-687 undermines the credibility of her claim of continuous residence in the United States during the requisite period as well as her own credibility. Pursuant to *Matter of Ho, supra*, the applicant has not furnished any independent objective evidence that would serve to resolve this inconsistency.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, as well as the inconsistencies and contradictions noted in the record, seriously detract from the credibility of her 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 inconsistencies in the record and the lack of credible supporting documentation, it is concluded that she has failed to establish by a preponderance of the evidence that she has 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.