

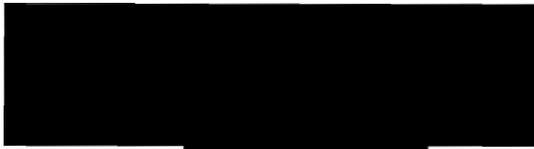
identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

41



FILE: MSC-06-101-19023

Office: LOS ANGELES

Date:

SEP 12 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: SELF-REPRESENTED

**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. Therefore, the director determined the applicant was not eligible to adjust to temporary resident status pursuant to the CSS/Newman Settlement Agreements and denied the application.

On appeal, the applicant asserts that she was very nervous at the time of her interview. She submits additional declarations in support of her application with her appeal.

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. 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 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 or petition.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his or 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 a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on January 9, 2006. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant indicated her addresses in the United States during the requisite period were: [REDACTED] California from June 1981 until December 1987; and [REDACTED] California from January 1988 until June 1994. At part #32 where the applicant was asked to list all of her absences from the United States, she indicated that she had one absence during the requisite period when she went to Mexico for the birth of her daughter from May to June in 1984. At part #33, where the applicant was asked to list all of her employment in the United States since she first entered, she did not indicate that she was employed in the United States before 1994.

The record also contains a record of a sworn statement. In this statement, signed on October 12, 2006, the applicant states that she entered the United States in 1978. She states that she was absent from the United States in “84 88” and states that she attempted to apply for legalization in 1988 but was turned away because of her absence. She states that from 1978 to 1987 she babysat her sister’s children. She states that she was paid in cash.

Also in the record is a Form I-687 that the applicant signed on January 29, 1996. At part #16 of this Form I-687 the applicant indicated that she last entered the United States in February 1988. At part #32 of this application the applicant indicates that she has two children who were born in Mexico, [REDACTED]. However, she states that she does not know their dates of birth. At part #33 where the applicant was asked to list all of her addresses of residence since she entered the United States, she indicated that she first resided at [REDACTED] in East Los Angeles from January 1982 until October 1988. The applicant did not indicate an address of residence before January 1982. At part #35 where the applicant was asked to list all of her absences from the United States since she entered the United States, she stated that she was absent once when she returned to Mexico from January to February 1988. At part #36 where the applicant was asked to list all of her employment in the United States since she first entered, she indicated that she was a housewife and that she did housework from January 1982 until November 1986 and that she then worked for "Toy's" in Northridge, California as an assembler from November 1986 until August 1989.

It is noted that the dates associated with the applicant's addresses of residence during the requisite period and the dates associated with her absences from the United States as well as her employment during the requisite period were not listed consistently on her two Forms I-687, casting doubt on her residence in the United States during the requisite period.

Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

An applicant who has been convicted of a felony or three or more misdemeanors in the United States is not eligible to adjust to temporary resident status. 8 C.F.R. § 245a.2(c)(1).

"Felony" means a crime committed in the United States punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except when the offense is defined by the state as a misdemeanor, and the sentence actually imposed is one year or less, regardless of the term such alien actually served. Under this exception, for purposes of 8 C.F.R. Part 245a, the crime shall be treated as a misdemeanor. 8 C.F.R. § 245a.1(p).

"Misdemeanor" means a crime committed in the United States, either (1) punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or (2) a crime treated as a misdemeanor under 8 C.F.R. § 245a.1(p). For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor. 8 C.F.R. § 245a.1(o).

The record contains the applicant's arrest record. This record indicates the following:

- The applicant was arrested on March 12, 1978 for *Attempting to enter the United States with counterfeit documents*, a violation of 18 U.S.C. § 1426. The record indicates that no formal charges were brought against the applicant.
- The applicant was arrested on March 19, 1978, also for *Attempting to enter the United States with counterfeit documents*, a violation of 18 U.S.C. § 1426. The record indicates that no formal charges were brought against the applicant.

The applicant was arrested for a third time on December 24, 1995 for a violation of the California Penal Code § 484(a), *Theft of property*, a misdemeanor. The record shows that the applicant was convicted of this offense on January 18, 1996, Case Number- [REDACTED]. She received 12 months probation and was fined as a result of this conviction.

The applicant's conviction of one misdemeanor offense alone does not render her ineligible to adjust to temporary resident status pursuant to the regulation at 8 C.F.R. § 245a.2(c)(1).

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. 8 C.F.R. § 245a.2(d)(5). To meet her burden of proof, the applicant must provide evidence of eligibility apart from her own testimony. 8 C.F.R. § 245a.2(d)(6). **The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that an applicant may submit to establish proof of continuous residence in the United States during the requisite period. This list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts or letters. An applicant may also submit any other relevant document pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).**

The director of the National Benefits Center issued a Notice of Intent to Deny (NOID) to the applicant on March 29, 2006. In the NOID, the director stated that the applicant failed to submit evidence of the following: that she entered the United States before January 1, 1982 and then resided in a continuous unlawful status except for brief absences from before 1982 until the date she (or her parent or spouse) was turned away by Immigration and Naturalization Service (INS) when they tried to apply for legalization; that she was continuously physically present in the United States except for brief, casual and innocent departures from November 6, 1986 until the date that she (or her parent or spouse) tried to apply for legalization; and that she was admissible as an immigrant. The director granted the applicant 30 days within which to submit additional evidence in support of her application.

In response to the NOID, the applicant submitted a brief dated April 20, 2006. In this brief, the applicant stated that because she was paid as an undocumented worker during the requisite period, she has no record of taxes. She states that she paid her bills in cash and, as such, she has no receipts. She states that she does have declarations of individuals attesting to her residency in the United States and requests that her application be reconsidered.

The record also contains the following evidence that is relevant to the applicant's residence in the United States during the requisite period:

- A Form for Determination of Class Membership in CSS v. Meese signed by the applicant on January 29, 1996. The applicant stated that she first entered the United States in 1982. She states that she was absent from the United States from January to February of 1988.
- An affidavit from [REDACTED] that was notarized on October 11, 2006. The affiant submits a photocopy of a California Identification Card, her Social Security Card and her Permanent Resident Card. She also submits a Social Security earnings statement that indicates that she had earnings in the United States from 1974 to 1980 and then from 1989 to 1992. However, this statement does not show any earnings during the requisite period. The affiant states that she knows that the applicant resided in Canoga Park, California from January 1, 1979 until the date that she signed the affidavit. The affiant does not state how she knows that the applicant resided in the United States during the requisite period. She does not indicate the frequency with which she saw the applicant during that time or whether there were periods of time during the requisite period when she did not see the applicant. Further, though the applicant stated in her sworn statement that she entered the United States in 1978, her Form I-687 submitted in 1996 does not show an address of residence in the United States until 1982 and her Form I-687 submitted in 2006 shows a residence in the United States beginning in June 1981. The previously noted Form for Determination of Class Membership indicates that the applicant first entered the United States in 1982. The start date associated with the applicant's residence in the United States on this affidavit is not consistent with either of the applicant's Forms I-687 or with the applicant's testimony.
- A declaration from [REDACTED] that states that the applicant resided at her home located at [REDACTED] California from 1979 to 1987. She states that the applicant took care of her children and that she paid the applicant in cash for this care. Though the applicant stated in a sworn statement taken in October of 2006 that she entered the United States in 1978, her Form I-687 submitted in 1996 does not show an address of residence in the United States until 1982 and her Form I-687 submitted in 2006 shows a residence at this address beginning in June 1981 rather than in 1979. The start date associated with the applicant's residence in the United States on this declaration is not consistent with either Form I-687 or with the applicant's testimony. Further, the applicant did not show any employment during the requisite period on her Form I-687 submitted in 2006, and she showed that she worked as an assembler at a factory beginning in November

1986 on her Form I-687 submitted in 1996. The applicant did not indicate that she was ever employed as a babysitter on either of these forms.

- An affidavit from [REDACTED] that was notarized on April 12, 2006. The affiant submits a photocopy of her California Senior Citizen's Identification Card and her Permanent Resident Card with her affidavit. The affiant states that she knows that the applicant resided at [REDACTED] in Los Angeles, California from January 1, 1979 and continued to reside there on the date she signed the affidavit. It is noted that the dates associated with the applicant's residence at this address on this affidavit are not consistent with the dates she provided in her previously noted declaration. It is noted that the applicant indicated that she resided at a similar address of residence from June 1981 until December 1987 on her Form I-687 submitted in 2006. She also indicated that she resided at a similar address from January 1982 until October 1988 on her Form I-687 submitted in 1996. However, the dates associated with her residence at that address on this affidavit are not consistent with either of the applicant's Forms I-687. Further, this affiant has submitted a declaration that indicates that the applicant's residence at this address ended in 1987. Because this affidavit is not consistent with other evidence in the record and because it is significantly lacking in detail, it can only be accorded very minimal weight as evidence that the applicant resided in the United States during the requisite period.
- An affidavit from [REDACTED] that was notarized on April 7, 2006. The affiant submits a photocopy of the identity page of his passport and an earnings statement that states he had an income earned in the United States during the requisite period. The affiant states that he personally knows that the applicant resided in Canoga Park, California from January 1982 until April 2006. The affiant does not provide an address associated with this residence. He does not state the frequency with which he saw the applicant during the requisite period or whether there were lengths of time during that period when he did not see the applicant. Because this affidavit is significantly lacking in detail, it can only be accorded minimal weight as evidence that the applicant resided continuously in the United States from 1982 until the end of the requisite period.
- A photocopy of an envelope that indicates that the applicant sent a letter to [REDACTED]. However, the date stamp on this envelope is not legible. Therefore, the AAO cannot determine whether this evidence is relevant to the requisite period.
- An affidavit from [REDACTED] that was notarized on May 28, 2002. The affiant states that she knows that the applicant resided in the United States from April 1988 until the date she signed the affidavit. Though she speaks of the applicant's moral character, this affidavit only pertains to one month of the requisite period.
- An affidavit from [REDACTED] that was notarized on April 7, 2006. The affiant states that she personally knows that the applicant resided in Canoga Park from January 1983 until April 2006. The affiant does not provide an address associated with this

residence. She does not state the frequency with which she saw the applicant during the requisite period or whether there were lengths of time during that period when she did not see the applicant. Because this affidavit is significantly lacking in detail, it can only be accorded minimal weight as evidence that the applicant resided continuously in the United States from 1983 until the end of the requisite period.

- An affidavit from [REDACTED] that was notarized on April 12, 2006. The affiant submits a photocopy of his California Driver's License and his Permanent Resident Card with his affidavit. The affiant states that he knows that the applicant resided at [REDACTED], in Los Angeles, California from January 1, 1979 until the present date. It is noted that the applicant indicated that she resided at a similar address of residence from June 1981 until December 1987 on her Form I-687 submitted in 2006. She also indicated that she resided at a similar address from January 1982 until October 1988 on her Form I-687 submitted in 1996. However, the dates associated with her residence at that address on this affidavit are not consistent with either of the applicant's Forms I-687. Further, the affiant does not indicate the frequency with which he saw the applicant during the requisite period or state whether there were periods of time during that period when he did not see the applicant. Because this affidavit is not consistent with other evidence in the record and because it is significantly lacking in detail, it can only be accorded very minimal weight as evidence that the applicant resided in the United States during the requisite period.
- An affidavit from [REDACTED] that was notarized on May 24, 2002. The affiants state that they know that the applicant resided in Canoga Park from 1988 until 2002. Though the affiants indicate that the applicant resided in apartments of [REDACTED] California. However, the applicant stated on her Form I-687 submitted in 2006 that she resided at [REDACTED] Reseda, California from January 1988 until June 1994. This Form I-687 states that the applicant did not begin residing on Sherman Way until June of 1994, after the requisite period ended. Because this affidavit is not consistent with other evidence in the record regarding the applicant's address of record during the requisite period, it can be accorded no weight as evidence that the applicant resided in the United States during the requisite period.
- An unlabeled photocopy of a photograph. It is not clear when this photograph was taken or who is pictured in it. Therefore, it cannot clearly be associated with the applicant's residence in the United States during the requisite period.
- A photocopy of a rental agreement for an apartment on Reseda Boulevard in Los Angeles California that begins on May 1, 1988. This rental agreement only pertains to four days of the requisite period.

It is noted that the applicant also submitted evidence of her residence in the United States subsequent to the requisite period. The issue in this proceeding is whether the applicant has submitted sufficient evidence to prove that she resided in the United States for the duration of the

requisite period. Therefore, evidence subsequent to that time is not relevant to this proceeding and will not be discussed here.

The director denied the application for temporary residence on January 11, 2007. In denying the application, the director found that the declarations submitted by the applicant had limited probative value. In saying this, the director noted that affiants from whom the applicant submitted affidavits failed to provide testimony regarding how they met the applicant. The director further stated that the affiants failed to provide evidence that they were physically present in the United States for the duration of the requisite period or that they had contact with the applicant during that period. Therefore, the director stated that the applicant failed to meet her burden of establishing that she resided continuously in the United States for the duration of the requisite period.

On appeal, the applicant asserts that she was nervous at the time of her interview. She submits a brief dated February 5, 2007 on which she states that though she has resided in the United States since 1981, she was paid in cash and paid her bills in cash and, therefore, she has no receipts.

The applicant resubmits previously submitted documents and further submits the following:

- An affidavit from [REDACTED] that is dated January 31, 2007. The affiant submits a Social Security FICA earnings statement that indicates that she earned income in the United States for all years of the requisite period. The declarant states that the applicant is her sister and that she resided in her home located at [REDACTED] in the United States from 1979 to 1988. She states that the applicant took care of her children and was paid in cash. However, it is noted that the applicant's Form I-687 submitted in 1996 and her Form for Determination of Class Membership state that she first entered the United States in 1982. She also stated on her Form I-687 submitted in 2006 that her residence at this address began in June 1981. This affiant has previously submitted an affidavit on which she indicated that the applicant continued to reside at this address subsequent to the requisite period. Because this declaration is not consistent with other evidence in the record, including the declarant's own previously submitted affidavit, minimal weight can be accorded to this declaration as evidence that the applicant resided in the United States during the requisite period.
- An affidavit from [REDACTED] that was notarized on February 1, 2007. The affiant submitted a photocopy of her FICA earnings statement that indicates that she earned income in the United States during all years of the requisite period. The affiant states that the applicant babysat her children in 1979. She states that she has been in contact with the applicant since that time. Though the affiant states that the applicant babysat her children in 1979, she does not state the frequency with which the applicant babysat her children or state the date through which the applicant was employed by her. Further, the applicant did not indicate an address of residence in the United States in 1979 on either of

her Forms I-687. She also failed to state that she was ever employed as a babysitter on these forms.

- An affidavit from [REDACTED] that was notarized on February 1, 2007. The affiant submits a photocopy of a FICA earnings statement that indicates that he earned income in the United States during all years of the requisite period. The affiant states that the applicant babysat his children in 1979. He states that his family has been in contact with her since that time. Though the affiant states that the applicant babysat his children in 1979, he does not state the frequency with which she babysat for him or state the date her employment as a babysitter ended. Further, the applicant did not indicate an address of residence in the United States in 1979 on either of her Forms I-687. She also failed to state that she was ever employed as a babysitter on these forms.

The AAO has reviewed the documents submitted by the applicant in support of her application and has found that the applicant has failed to satisfy her burden of proof. Though she has submitted declarations and affidavits in support of her application the record is not consistent regarding when the applicant entered the United States for the first time. She has stated in a sworn statement on October 11, 2006 that she first entered in 1978. However, she has submitted a Form I-687 in 1996 that does not indicate an address of residence in the United States until 1982. Similarly, her Form for Determination of Class Membership submitted in 1996 indicates that she first entered the United States in 1982. Her Form I-687 submitted in 2006 indicates her first address of residence began in June 1981. She has submitted affidavits that indicate her residence in the United States began in 1979. These inconsistencies cast doubt on when the applicant first began residing in the United States. Further, the declaration and affidavits from [REDACTED] are not consistent regarding the applicant's residence at [REDACTED] in Los Angeles. This affiant has submitted an affidavit on which she states that the applicant resided with her at this address until 1987. She has also submitted an affidavit on which she states that the applicant continues to reside at this address. These and other inconsistencies as noted above cast doubt on the applicant's residence in the United States during the requisite period such that they cause the applicant to fail to satisfy her burden of proving that she entered the United States prior to January 1, 1982 and then continued to reside in the United States continuously for the duration of the requisite period.

In this case, the absence of credible, consistent and probative documentation to corroborate the applicant's claim of continuous residence in the United States seriously detracts 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 regarding the date the applicant first began to reside in the United States, her employment during the requisite period, and the dates she resided at addresses of residence in the United States, it is concluded that he 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.