

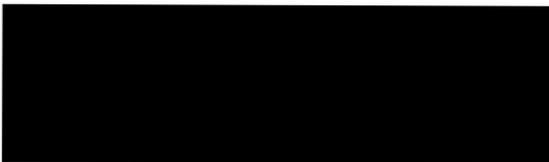
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FILE: [Redacted]  
MSC-05-239-14285

Office: LOS ANGELES

Date: **SEP 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. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed or rejected, 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.

A handwritten signature in black ink, appearing to read "R. 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 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 denied the application on February 2, 2007. The director determined that the applicant failed to establish, by a preponderance of the evidence, continuous unlawful residence in the United States throughout the requisite period. Specifically, the director found that the affidavits submitted by the applicant lacked evidentiary weight because they lacked detail and were not accompanied by corroborative documents.

On appeal the applicant states that the director's decision was erroneous and that she is eligible for temporary resident status. The applicant has not submitted additional evidence on 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)(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).

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.

The 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 applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on May 27, 2005. The applicant submitted the following documents in support of her application:

A written statement from [REDACTED] dated May 13, 2005. The declarant states that the applicant lived with her at [REDACTED] from 1981 until 1987. Although the dates and place of residence are consistent with information provided by the applicant on her I-687 application, the statement lacks details such as the circumstances under which the declarant came to know the applicant or how she dates her initial acquaintance with the applicant. Lacking such relevant detail, the statement can be afforded only minimal weight as evidence of the applicant’s residence in the United States during the requisite period.

A written statement from [REDACTED] dated May 20, 2005. The declarant states that she first met the applicant in December 1981 at a party. The declarant states that she and the applicant became friends after that and would see each other at various social functions. The declarant does not explain the nature and frequency of her contact with the applicant during the requisite period. Lacking such detail, the affidavit has little probative value and will be given minimal weight as evidence of the applicant’s residence in the United States during the requisite period.

- A written statement from [REDACTED] dated May 13, 2005. The declarant states that he was the manager of the Westminster Car Wash System and that the applicant was employed by that company on a full time basis from December 1981 until June 1989. This statement is

deficient in that it does not comply with the regulation relating to past employment records. For example, the statement does not provide the applicant's address at the time of employment and does not state whether or not the information was taken from official company records. 8 C.F.R. § 245a.2(d)(3)(i). Even absent compliance with the regulation, the letter is considered a "relevant document" under 8 C.F.R. §245a.2(d)(3)(iv)(L). *See, Matter of E-M-* 20 I&N Dec. at 81. However, the letter lacks any details that would lend it credibility. The letter therefore has 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 during 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 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.