

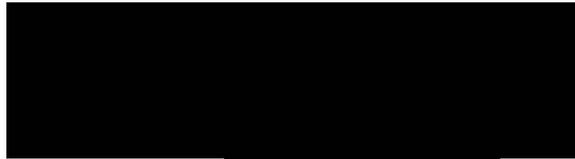
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U.S. Citizenship
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Services

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FILE: [REDACTED]
MSC-05-244-13066

Office: LOS ANGELES

Date: OCT 22 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. 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.

A handwritten signature in black ink, appearing to read "Robert P. 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 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 she entered the United States in December 1981. The applicant states that she resided at [REDACTED] home in the city of La Puente, California for eight years. The applicant states that she then moved to [REDACTED] home in La Puente, California. The applicant states that she had furnished affidavits regarding her residence and employment from [REDACTED] and [REDACTED].

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 June 1, 2005. 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 in Los Angeles, California from November 1981 until 1989. At part #33, she showed that during the requisite period she was employed with [REDACTED] in Santa Ana, California as a babysitter from February 1982 until January 1983; [REDACTED] in Los Angeles, California as a cleaner from January 1983 until February 1987; and WIT Fashion in City of Industry, California as a seamstress in February 1987. Notably, the applicant failed to list an end date for her employment with WIT Fashion.

The applicant submitted as corroborating evidence with this application identical affidavits, dated July 17, 2001, from [REDACTED] and [REDACTED]

The affidavits state that to the affiants' personal knowledge the applicant has resided at [REDACTED], La Puente, California from 1981 until 1991. The affidavits indicate that the affiants have known the applicant since 1981. These affidavits fail to convey how and where the affiants first met the applicant. They also do not provide any information on how the affiants dated their initial acquaintance with the applicant. Furthermore, the affidavits do not illustrate the frequency of the affiants' contact with the applicant in the United States during the requisite period. Moreover, the applicant's residential address in La Puente as indicated on these affidavits is inconsistent with her Form I-687. The applicant showed on her Form I-687 that during the requisite period she resided at: [REDACTED], Los Angeles, California from November 1981 until August 1984 and [REDACTED], Los Angeles, California from August 1984 until 1989. Given these deficiencies, the affidavits are without any probative value as evidence of the applicant's residence in the United States during the requisite period.

The applicant's record shows that on August 30, 1991, she was interviewed by the former Immigration and Naturalization Service for a determination of her class membership in *CSS v. Thornburgh*. The applicant furnished for this interview: a Form I-687 (signed on August 24, 1991); a Form for Determination of Class Membership in *CSS v. Thornburgh*; and corroborating affidavits.

The applicant's initial Form I-687 shows that during the requisite period she resided at 16044 [REDACTED], La Puente, California from December 1981 until April 1989. It also shows that she was outside the United States from September 1987 until October 1987.¹ However, the applicant's instant Form I-687 shows that during the requisite period she resided at [REDACTED], Los Angeles, California from November 1981 until August 1984 and [REDACTED], Los Angeles, California from August 1984 until 1989. It shows that she was outside the United States from July 30, 1987 until August 30, 1987. The inconsistency between these two applications undermines the credibility of the applicant's claim of continuous residence in the United States during the requisite period as well as her own 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 furnished with her initial Form I-687 application the following documentation:

- An affidavit from [REDACTED], dated August 1991. The affidavit provides that the affiant has knowledge of the applicant's residence at [REDACTED], La Puente, California from January 4, 1981 until August 28, 1991. The affidavit states that the affiant's relationship to the applicant is as a friend. This affidavit fails to convey how, where and when the affiant first became acquainted with the applicant. It also does not establish the

¹ The applicant indicated on her Form for Determination of Class Membership in *CSS v. Thornburgh* that she was outside the United States from September 10, 1987 until October 21, 1987.

origin of the information she has attested to. Furthermore, it fails to illustrate the frequency of her contact with the applicant in the United States during the requisite period. Moreover, the affiant's assertion that the applicant resided from 1981 to 1991 in La Puente, California is inconsistent with the instant application, which shows that she resided in Los Angeles, California from 1981 to 1989. Given these discrepancies, this affidavit is without any probative value as evidence of the applicant's residence in the United States during the requisite period.

- An affidavit from [REDACTED], which provides that the applicant was employed by him as a babysitter from February 1982 until January 1983. This affidavit is dated August 26, 1991, over nine years after the date the applicant purportedly began her employment with the affiant. However, it fails to indicate how the affiant dated the applicant's employment with him nine years later. Furthermore, this affidavit fails to comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(i), which states that letters from employers should include the applicant's duties and address at the time of employment. Given these deficiencies, this affidavit is of little probative value as evidence of the applicant's employment in the United States from February 1982 to January 1983.
- An affidavit from [REDACTED], which provides that the applicant was employed by him in the position of cleaning at his business, [REDACTED], from January 1983 until February 1987. This affidavit is dated August 26, 1991, over eight years after the date the applicant purportedly began her employment with [REDACTED]. However, it fails to indicate how the affiant dated the applicant's employment with his company nine years later. Furthermore, this affidavit fails to comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(i), which states that letters from employers should include the applicant's duties and address at the time of employment. Given these deficiencies, this affidavit is of little probative value as evidence of the applicant's employment in the United States from January 1983 to February 1987.
- An affidavit from [REDACTED], dated August 24, 1991. This affidavit provides that the applicant left the United States on September 10, 1987 to visit her family in Mexico. It states that the applicant returned to the United States without inspection on October 21, 1987. This affidavit fails to indicate the origin of the information she has attested to. Moreover, the applicant's purported absence from September 10, 1987 to October 21, 1987 is inconsistent with the instant Form I-687. The instant Form I-687 shows that the applicant was outside the United States from July 30, 1987 to August 30, 1987. 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.

On October 24, 2005, the adjudication officer issued a Form I-72, Request for Evidence, to the applicant. The Form I-72 requested the applicant to provide: a statement from the Social Security Administration listing the years she had worked; the birth certificate for her child, [REDACTED] and Internal Revenue Service print-outs from 1981 until 1988. In response to the Form I-72, the applicant furnished the following:

- A letter from the Internal Revenue Service (IRS) office in Los Angeles. This letter, dated November 14, 2005, states that the IRS was unable to supply the applicant with tax information from 1981 to 1988. It states that the local database will only supply information beginning from 1995 to present. Since this letter does not relate the requisite period, it is without any probative value in this proceeding.
- A birth certificate for the applicant's daughter, [REDACTED], with certified English translation. The birth certificate states that the applicant gave birth to [REDACTED] in Mexico on August 10, 1987. This information corroborates the applicant's period of absence from the United States as indicated on the instant Form I-687. However, it is inconsistent with her initial Form I-687, which lists her only period of absence from the United States as September 1987 until October 1987.
- A Social Security Administration (SSA) Form SSA-795, Statement of Claimant or Other Person, filed by the applicant on April 21, 2004. The applicant indicated on this form that her earnings for 1990, 1991, 1996-1998 and 2000-2003 should be transferred. The applicant also furnished two letters from the SSA, respectively dated August 4, 2003 and April 21, 2004. The first letter is a receipt for her application for a Social Security Card and the second is a verification of her social security number. Since these documents do not relate the requisite period, they are without any probative value in this proceeding.

On September 27, 2006, the director issued a Notice of Decision to deny the application. In denying the application the director determined that the applicant's evidence was insufficient to establish her residence in the United States for the requisite period and she did not present any new evidence in response to the Form I-72. The director concluded that the applicant failed to establish by a preponderance of the evidence that she has continuously resided in the United States for the requisite period.

On appeal, the applicant asserts that she entered the United States in December 1981. The applicant states that she resided at [REDACTED]'s home in the city of La Puente, California for eight years. The applicant states that she then moved to [REDACTED]'s home in La Puente, California. The applicant states that she had furnished affidavits regarding her residence and employment from [REDACTED] and [REDACTED].

The applicant resubmits as corroborating evidence the affidavits from [REDACTED] and [REDACTED]. Additionally, the applicant furnishes her own affidavit, which states that because of her unlawful status she never signed a contract, lease or any other document to rent an apartment or house under her name. The affidavit states that she had already submitted her receipts to CIS as corroborating evidence of her continuous residence in the United States since December 1981.

The applicant's assertions on appeal do not overcome the basis for the director's denial. The applicant has failed to provide credible, reliable and probative evidence of her residence in the United States during the requisite period. The applicant has not provided sufficient evidence to establish that she entered the United States prior to January 1, 1982. Nor has she provided sufficient evidence of her residence in the United States during the 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, five affidavits. As stated, these affidavits are without any probative value because they are inconsistent with the instant Form I-687 and lack significant detail. The applicant also submitted letters from two of her former employers as corroborating evidence. As stated, these letters can only be given minimal probative value because they lack significant detail. 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 without any probative value and is of questionable credibility, she has not furnished sufficient evidence to meet her burden of proof in this proceeding. Furthermore, 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.