

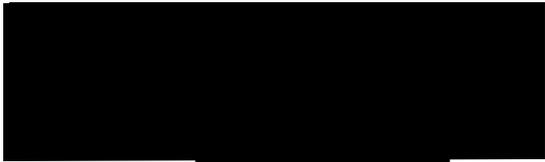
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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FILE: [REDACTED]
MSC-05-137-10029

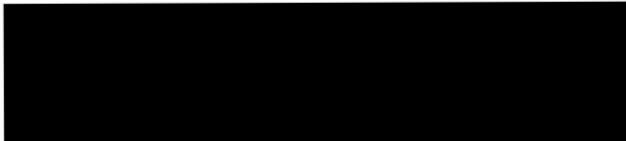
Office: LOS ANGELES

Date: APR 10 2009

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.

John F. Grissom
Acting 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 (together comprising the I-687 Application). The director found that the applicant had failed to meet her burden of proving that she entered the United States before January 1, 1982 and had resided continuously in the United States in an unlawful status since that date through the date she filed or attempted to file the application for temporary resident status. Specifically, the director denied the application because the applicant had not submitted sufficient credible evidence to establish her eligibility for the benefit sought.

On appeal, counsel for the applicant claims that the director failed to consider the additional evidence submitted to establish that the applicant resided continuously in the United States throughout the requisite period. Further, counsel asserts that the applicant has submitted credible evidence to establish her continuous residence in the United States for the duration of the requisite period.

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)(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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.2(d)(6).

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, "[t]ruth is to be determined not by the quantity of evidence alone but by its quality." *Id.* 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 (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 sole issue here is whether the applicant has furnished sufficient credible evidence to establish by a preponderance of the evidence that her entry into the United States was before January 1, 1982 and that her residence in the United States was continuous throughout the requisite period.

During her interview with a United States Citizenship and Immigration Service (USCIS) officer on August 11, 2006, the applicant stated that she first came to the United States in July 1981. Further, the applicant indicated that she had continuously resided in the United States since July 1981 through the date she attempted to file the temporary resident status application in 1988. As evidence of her claim of continuous residence throughout the requisite period, the applicant submitted three letters from her former employers, sworn statements from five individuals, and several pictures claimed to be taken in the United States between 1982 and 1989. As additional evidence, the applicant also provided telephone numbers of the affiants as well as their government-issued identifications.

The letter from [REDACTED] will not be considered since it postdates the requisite period. The letter from [REDACTED] claims that the applicant worked at [REDACTED] from October 6, 1987 until August 8, 1988 and again from January 5, 1990 to the present date, April 6, 1990. The author fails to

offer specific details about the applicant's employment as prescribed by the regulations at 8 C.F.R. § 245a.2(d)(3)(i). Specifically, the author fails to provide information about where the applicant resided at the time of employment, what her specific duties with the company were, whether or not the information was taken from official company records, and where records are located and whether USCIS may have access to the records. Thus, the letter will be given minimal weight.

The letter from [REDACTED] states that based on the company's payroll records, the applicant was an employee of the company between August 7, 1987 and October 7, 1987. It also lists the applicant's address at the time of employment and her social security number. However, a review of the letter reflects that the applicant's address on the letter is different from the address listed on her Form I-687. It is further noted that the applicant submitted no evidence to indicate that the social security number listed on the [REDACTED] letter was hers.¹ 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). Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the application. *Id.* at 591.

All five affiants generally claim that they have known the applicant since before January 1, 1982 and throughout the requisite period. Most state that they knew the applicant through her mother. None of them offers detailed information specifically about the applicant, which would show that their relationships with the applicant probably did begin in 1981 and that they, by virtue of that relationship, have knowledge of the facts alleged. For instance, none of the affiants states with any specificity how he or she first met the applicant, where the applicant resided, whether she attended school or worked during the requisite period, or provides other details about the applicant's life in the United States to establish the credibility of their assertions. Simply listing the address at which the applicant lived during the requisite period without providing any detail about the events and circumstances of the applicant's life in the United States during the requisite period does not establish her continuous residence in the United States throughout the requisite period. Moreover, none of the affiants provided evidence that they were residing in the United States during the requisite period. The lack of detail in the affidavits combined with the affiants' failure to submit contemporaneous evidence of their own residence in the United States significantly reduces the probative value of their affidavits.

Further detracting from [REDACTED] affidavit is his assertion that he employed the applicant to clean a house at [REDACTED] Huntington Park in California from February 1982 to November 1984. Neither of the applicant's Forms I-687 filed in 2005 and 1990 lists employment with [REDACTED]. Nor did the applicant mention about that employment during her interview. The applicant's failure to list or mention her employment with [REDACTED] is

¹ The last four numbers of the applicant's social security number on her social security statement do not match the last four numbers listed on the letter.

significant, considering that she worked for him for more than three years during the requisite period. The I-687s list no employment prior to August 1987. The Social Security Earnings Statement reflects her first earnings in the United States in 1990.

Finally, the pictures submitted are not probative as evidence that the applicant resided continuously in the United States during the requisite period. The pictures, by themselves, reveal no information when and where they were taken. Further, the applicant provided no corroborating evidence other than her statement that the photographs were taken in the United States between 1982 and 1989.

The absence of probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period 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 lack of credible supporting documentation and inconsistencies in the record, it is concluded that the applicant 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.