

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

L1



FILE: [REDACTED]  
MSC 05 223 11421

Office: LOS ANGELES

Date: **AUG 06 2007**

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. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

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, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director determined the applicant had not demonstrated that she had continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that she attempted to file a Form I-687, Application for Status as a Temporary Resident, with the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS) in the original legalization application period of May 5, 1987 to May 4, 1988. Therefore, the district director determined that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and denied the application.

On appeal, the applicant states that she included with her Form I-687 application affidavits from persons who knew that she entered the United States in 1980 with her mother, but the district director failed to give due consideration to her affidavits.

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 Immigration and Nationality Act (Act), 8 U.S.C. § 1255a(a)(2).

An applicant applying for adjustment to temporary resident status must 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).

For purposes of establishing residence and presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the alien attempted to file a completed Form I-687 application and fee or was caused not to timely file, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

An alien applying for adjustment of status has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, 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. See 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.* 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 (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 from prior to January 1, 1982 through the date she attempted to file a Form I-687 application with the Service in the original legalization application period of May 5, 1987 to May 4, 1988. Here, the submitted evidence is not relevant, probative, and credible.

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 May 11, 2005. At part #16, where applicants are instructed to list the date they last entered the United States, the applicant stated that she last entered the United States on March 6, 1988. At part #30 of the Form I-687 application where applicants are instructed to list all residences in the United States since first entry, the applicant indicated that she resided at “[redacted] West Covina, CA” and at “[redacted] West Covina, California,” but she failed to list the inclusive dates of residence at both addresses. At part #32, where applicants are instructed to list all absences outside the United States during the requisite period, the applicant stated “Not applicable.”

At her interview with a CIS officer on February 7, 2006, the applicant stated under oath, “I was one when I was brought to the U.S. by [my] parents according to them. My parent had took [sic] me back for schooling and brought me back to the U.S. After 1988 I have never left the U.S.” She told the officer that she remembered going to first grade in India for a year.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted a document dated February 7, 1985, from [REDACTED] English School in Bombay, India, certifying the applicant was a student of that school in the 1984-85 school year.

She also submitted a photocopy of a Form I-687 signed by her father, [REDACTED], on April 8, 1990. [REDACTED] indicated on the Form I-687 that the applicant was living in the United States with him as of the date he signed the application.

The applicant also submitted a photocopy of the biographic page of her Indian passport issued in San Francisco, California, on May 21, 1997 and valid until May 20, 1998, and a Form I-94, Arrival/Departure Record, indicating that she was admitted to the United States at Los Angeles, California, on March 6, 1988, as a nonimmigrant B-2 visitor.

The applicant included a photocopy of a report card dated June 23, 1988, from a school, but the name and location of the school are not legible. The date of the applicant's enrollment in the school is not visible. Therefore, this document is not sufficient to establish the applicant's residence in the United States during the requisite period.

On appeal the applicant states that she submitted with the Form I-687 application affidavits attesting that she entered the United States in 1980, but the district director failed to take into consideration the evidence submitted. She further states that there were "discrepancies" in her Form I-687 filed by her attorney.

The applicant did not submit any affidavits attesting to her residence in the United States with the Form I-687 application. The record does contain three affidavits from individuals attesting to the residence of the applicant's mother, [REDACTED], in the United States since March 6, 1988. These affidavits were submitted in support of two Forms I-817 Application for Voluntary Departure Under the Family Unity Program, filed on the applicant's behalf by attorney Hari S. Lal. These affidavits make no mention of the applicant's presence in the United States and do not relate to the requisite period to establish continuous residence in the United States.

In summary, the applicant has not provided acceptable contemporaneous evidence of residence in the United States relating to the 1981-88 period, nor has she provided any attestations concerning that period to corroborate her claim. Furthermore, the Form I-687 application does not list any dates of residence or absence outside the United States. She stated under oath at her legalization interview that she was taken back to India by her parents for schooling for a year. The record confirms that she was admitted the United States on March 6, 1988, as a nonimmigrant B-2 visitor. The record also contains an Indian school certificate confirming that she was attending school in India for the 1984-85 school year. The evidence of record and the applicant's own testimony under oath during her legalization interview support a conclusion that

the requisite period and may, in fact, have entered the United States for the first time on March 6, 1988.

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 lack of dates of residence and absence on her Form I-687 application and her contradictory statements during her legalization interview, it is concluded that the applicant has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the date she attempted to file a Form I-687 application 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.