

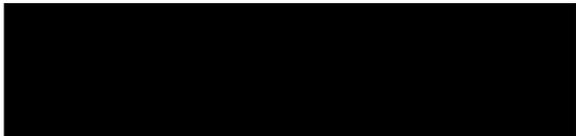


U.S. Citizenship  
and Immigration  
Services

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invasion of personal privacy**

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FILE: [REDACTED]  
MSC-04-272-10174

Office: NEW YORK Date: DEC 26 2007

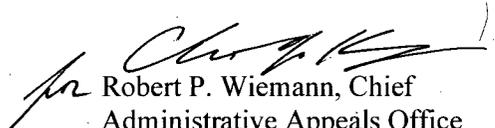
IN RE: Applicant: [REDACTED]

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: SELF-REPRESENTED

**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, New York. 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 failed to meet her burden of proving by a preponderance of the evidence that she 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 under this section.

On appeal, the applicant stated that the director's decision is erroneous because the applicant meets all the criteria of eligibility for temporary resident status. The applicant stated that she submitted a credible affidavit. The applicant also stated that the CSS/Newman Settlement Agreements indicate Citizenship and Immigration Services (CIS) should take the passage of time into account when assessing evidence provided by applicants, and that failure to provide evidence other than affidavits shall not be the sole basis for finding the applicant failed to meet the continuous residence requirement. The applicant also attached a copy of the identity documentation for an individual who had already submitted an affidavit, together with a new declaration signed by the same individual.

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 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 for the duration of the requisite period. Here, the submitted evidence is not relevant, probative, and credible.

The record shows that the applicant submitted a Form I-687 application and Supplement to CIS on June 28, 2004. 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 listed only [REDACTED] York, New York from September 1981 to July 1988 during the requisite period.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided a declaration and an affidavit. In his declaration dated December 7, 2005, [REDACTED] stated that he can “vouch for [the applicant’s] entry into the United States before January 1, 1982 through May 4, 1988.” The declarant also stated that he can “vouch for [the applicant’s] residence and continuous physical presence in the United States from 1985 to May 4, 1988.” Lastly, he stated that he personally knows the applicant and can “[v]ouch for his continuous physical presence in the United States from 1982 to date.” This declaration does not specifically

confirm the applicant resided in the United States from before January 1, 1982 until the date she attempted to apply for temporary resident status. In addition, the declaration fails to state how the declarant dates his initial acquaintance with the applicant, the nature of his relationship with the applicant, the frequency of his contact with the applicant, or the addresses at which the applicant resided during the requisite period. As a result, this declaration is found to lack sufficient detail. It is noted that the declarant referred to the applicant using masculine pronouns in his declaration, although the applicant is female. This fact, together with the lack of detail provided in the declaration, casts doubt on whether the declarant can actually confirm the applicant resided in the United States during the requisite period.

The applicant also provided a form affidavit from [REDACTED] dated June 17, 2004. In his declaration, Mr. [REDACTED] stated that, to his personal knowledge, the applicant has resided in the United States as follows: Bronx New York from October 1980 to January 1986 and Manhattan, New York from January 1986 to present. The affiant stated that he became acquainted with the applicant in 1980 because he rented her a room in his home. This is inconsistent with the information provided on Form I-687, where the applicant indicated she lived at only one address from September 1981 to July 1988, as opposed to having moved from the Bronx to Manhattan in 1986. This inconsistency calls into question whether the affiant can actually confirm the applicant resided in the United States during the requisite period.

In response to a Notice of Intent to Deny (NOID) issued on May 24, 2006, the applicant submitted a form affidavit from [REDACTED]. In her affidavit dated March 18, 2006, Ms. [REDACTED] stated that to her personal knowledge the applicant has resided in the United States from August 1988 to present. The declarant stated that she has known the applicant since 1981 when she was selling different things in Lexington Avenue. This affidavit fails to confirm the applicant resided in the United States during the requisite period.

In denying the application, the director erroneously stated that the applicant has not provided any evidence to show that she resided in the United States for the requisite periods and is admissible to the United States under the provisions of section 245A of the Act. The applicant provided limited evidence in support of her claim to have resided in the United States during the requisite period, in the form of one declaration and two affidavits. However, in this context the director's error is harmless because the AAO conducts a *de novo* review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(d)(6). The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also*, *Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). The director determined that the applicant failed to meet her burden of proving by a preponderance of the evidence that she 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 under this section.

On appeal, the applicant stated that the director's decision is erroneous because the applicant meets all the criteria of eligibility for temporary resident status. The applicant stated that she submitted a credible affidavit. The applicant also stated that the CSS/Newman Settlement Agreements indicate CIS should take the passage of time into account when assessing evidence provided by applicants, and that failure to provide evidence other than affidavits shall not be the sole basis for finding the applicant failed to meet the continuous residence requirement. The applicant also attached a copy of the identity documentation for Ms. [REDACTED], together with a new declaration signed by Ms. [REDACTED]. In this declaration dated July 17, 2006, the declarant stated that she has known the applicant since 1981. This declaration fails to confirm the applicant resided in the United States during the requisite period.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the requisite period, and has submitted attestations from only three people concerning that period. The declaration from Mr. [REDACTED] does not specifically confirm the applicant resided in the United States throughout the requisite period, does not provide sufficient detail, and erroneously refers to the applicant as a male instead of as a female. The affidavit from Mr. [REDACTED] is inconsistent with the information provided on the applicant's Form I-687. The affidavit and declaration from Ms. [REDACTED] both fail to confirm the applicant resided in the United States during the 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 contradictions between the applicant's statements on her application and her supporting documentation, and given her 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.