

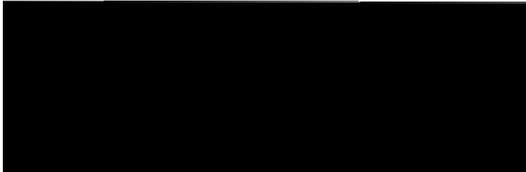
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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
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U.S. Citizenship
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Services

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FILE: [Redacted]
MSC 05 349 11604

Office: NATIONAL BENEFITS CENTER

Date: FEB 07 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. 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.

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 Director, National Benefits Center. 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. Specifically, the director noted that, although the applicant had submitted substantial evidence in support of her application, only one document, an affidavit from Gloria Rodriguez Parker, was relevant to the applicant's claim of continuous residence in the United States since 1981. The director further observed that this affidavit was neither credible nor amenable to verification. 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 submits three additional letters and affidavits in support of her claim, and a statement in which she seeks to further clarify the dates and locations of her residence and employment in the United States. The applicant indicated that she would also submit a brief within 30 days, however, as of this date, no brief or additional evidence has been incorporated into the record. The record will therefore be considered complete.

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). To meet her burden of proof, an applicant must provide evidence of eligibility apart from her 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, *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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that she continuously 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 Citizenship and Immigration Services (CIS) on September 14, 2005. 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 showed a current address in Rochester Hills, Michigan, and indicated that she previously resided at [REDACTED]. The applicant did not provide the dates during which she resided at this address, nor did she indicate any other addresses in the United States. Thus, it is unclear on what date the applicant claims to have made her initial entry to the United States, or whether such entry was made prior to January 1, 1982. Similarly, at part #33, she showed that she was self-employed as a hairdresser in Grass Valley, California, but did not indicate the dates associated with this employment. Where asked to indicate her absences from the United States at part #32 of the Form I-687, the applicant indicated that she traveled to Mexico for a family visit from December 1985 until July 1987.

The applicant submitted evidence in support of her application on December 30, 2005, in response to a Notice of Intent to Deny (NOID) issued on November 15, 2005. The applicant's response included copies of utility bills dated from 1997 to 2001; copies of money order receipts dating from 1993 to 1999; copies of the applicant's personal income tax returns dated 1996, 1997 and 1998; copies of the applicant's IRS Forms W-2, Wage and Tax Statement, dating from 1995 to 1999; copies of rent receipts from 1994, 1998 and 1999; and other receipts dated 1993, 1998 and 1999. While these documents provided evidence of the applicant's residency and employment in the United States subsequent to 1993, they do not offer any proof that she entered the United States prior to January 1, 1982 and continuously resided in this country for the duration of the requisite period.

The applicant also submitted an affidavit from [REDACTED] a resident of Royal Oak, Michigan, who stated that she has known the applicant since 1978 and has been closely associated with her since that time. She provided the applicant's current address in Michigan and stated that the applicant is a person of good moral character. She also stated that "sometime in or around 1978," the applicant indicated to her that she tried to legalize her status through the amnesty program. Here, the affiant did not state when, where, or under what circumstances she first met the applicant, how frequently she saw the applicant during the requisite period, or whether she even met the applicant in the United States. She did not provide any relevant, verifiable testimony, such as the applicant's address(es) of residence during the relevant period. The only detail she provided, i.e., that the applicant informed her that she tried to submit a legalization application in 1978, is not credible, as there was no amnesty or legalization program in place at that time, and because the applicant has since stated that she first came to the United States in 1980. Given the affiant's claim that she known the applicant for 27 years, the lack of detail regarding the events and circumstances of the applicant's residence in the United States is significant. Because the information contained in the affidavit is inconsistent with the applicant's own testimony and is lacking in detail, this affidavit is lacking in credibility and probative value.

The director denied the application on August 11, 2006. In denying the application, the director discussed the affidavit from [REDACTED] noting that it was lacking in credibility, for the reasons addressed above. The director further determined that the applicant had submitted no other relevant evidence in response to the NOID. Accordingly, the director concluded that the applicant had not established her eligibility for temporary residence under Section 245A of the Act.

On appeal, the applicant submits a statement dated September 8, 2006, in which she states the following:

I, [REDACTED] came to the United States in 1980 and lived with a friend of mine who died in 1995. I accompany him to Detroit Michigan that's were [sic] I met [REDACTED] who is now [REDACTED] (married name). When I lived with [REDACTED] she helped me to get a job. I worked at Coney Island on Bagley with [REDACTED] waiting tables and washing dishes. I lived with them from 1978-1979. I left in November 1979 and went to Grass Valley California. I started cutting grass, landscaping. I lived in a sleeping room with a family for 1 month; I was not making enough money, when I met, [REDACTED] I lived with her for 3 or 4 months in 1980 at [REDACTED]

[REDACTED]. There was an error in my application[.] I did not file in 1982[.] I am just starting to file.

It is noted that it appears the applicant is simultaneously claiming to have come to the United States in 1980, yet to have lived and worked in the United States in 1978 and 1979. The applicant did not indicate on her Form I-687 that she ever resided in Detroit, Michigan or in Nevada City, California, nor did she indicate that she was ever employed as a waitress, dishwasher or landscaper. Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. 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). Regardless, it is noted that the applicant only discusses her whereabouts during the years 1978 through 1980, and has not sought to clarify her addresses of residence or employment during the relevant period subsequent to 1981.

The applicant also submits the following evidence in support of her appeal:

- A letter from [REDACTED] dated September 8, 2006. [REDACTED] states that she has known the applicant since 1980 when she worked at her parent's restaurant (Coney Island) on 19th and Bagley. [REDACTED] submits a photocopy of her expired Michigan operator license as proof of her identity. Assuming that this is the same [REDACTED] who previously provided an affidavit in support of this application, it is noted that [REDACTED] previously stated that she met the applicant in 1978, not 1980, and this discrepancy has not been acknowledged by the applicant or by the affiant. [REDACTED] does not state where the applicant was residing when she worked for her parents, provide the location of the restaurant, or indicate how frequently she saw the applicant during the requisite period. The applicant herself claims that she only worked at the Coney Island restaurant from 1978 to 1979, so it is unclear how [REDACTED] met her there in 1980. The applicant also states on appeal that she resided with [REDACTED] while she was working at the restaurant, but [REDACTED] does not mention this information in her new letter. Because of the inconsistencies noted, and the significant lack of detail, [REDACTED]'s new statement is lacking in credibility and probative value.
- A notarized letter from [REDACTED] who states that the applicant lived with her at [REDACTED] City, California during May, June and July 1980. [REDACTED] provides a copy of her California driver license as proof of her identity. She does not indicate that she has any direct, personal knowledge of the applicant's residence in the United States during the relevant period. At most, the letter could serve to establish that the applicant was in the United States for three months in 1980. Because it does not address the applicant's residence during the requisite time period, this evidence is not relevant.
- A letter from [REDACTED] who states that he has known the applicant since 1980 when she resided in Grass Valley, California. He states that he is a former Spanish teacher in the Grass Valley School District, and that there were few Spanish-speaking people in Grass Valley at the time he met the applicant. He states that he became acquainted with her and helped her with

English, and that later, the applicant's daughter was a student in his classes. [REDACTED] provides a copy of his California driver license as proof of his identity. [REDACTED] does not provide any details such as how he met the applicant, how he dates his acquaintance with her, or how frequently he saw her during the requisite period. He also does not provide any relevant, verifiable information, such as her address of residence during the relevant timeframe. While the information in the affidavit corroborates the applicant's claim that she resided in Grass Valley, California in 1980, it is of little probative value in establishing her continuous residency in the United States for the duration of the requisite period.

As is stated above, 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). The applicant has been given the opportunity to satisfy his burden of proof with a broad range of evidence pursuant to 8 C.F.R. § 245a.2(d)(3). Here, the applicant has not provided any evidence of residence in the United States relating to the requisite period beyond her own inconsistent assertions and the statements and affidavits noted above. The statements and affidavits submitted in support of the application and on appeal lack credibility and probative value for the reasons noted.

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 noted in the record, seriously detract from the credibility of his 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.

Beyond the decision of the director, it is noted that the applicant indicated at part #32 of his Form I-687 application that she was absent from the United States from December 1985 until July 1987 on a family visit to Mexico. Applicants who are eligible for adjustment to Temporary Resident Status are those who establish that they entered the United States prior to January 1, 1982, and who have thereafter resided continuously in the United States in an unlawful status, and who 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).

An applicant shall be regarded as having resided continuously in the United States if, at the time of filing no single absence from the United States has exceeded forty-five (45) days and the aggregate of all absences has not exceeded one hundred eighty (180) days between January 1, 1982 and the date of filing his or her application for Temporary Resident Status unless the applicant establishes that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed. 8 C.F.R. § 245a.2(h)(1)(i).



The record does not contain any documentary evidence corroborating the applicant's claimed 18 to 19 month absence from the United States. However, assuming that she accurately stated under penalty of perjury that she was absent from the United States from December 1985 until July 1987, she cannot meet either the continuous residence or continuous physical presence requirements set forth above. For this additional reasons, the application cannot be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.