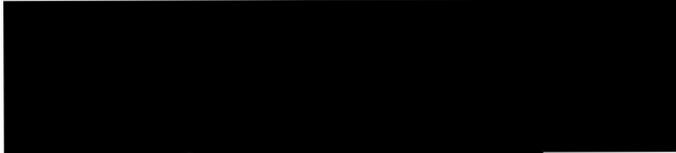


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FILE: [Redacted]
MSC 05 199 10561

Office: LOS ANGELES

Date: FEB 12 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:



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. 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 noted discrepancies between the applicant's testimony and testimony she previously made in connection with an asylum application, specifically with respect to her initial date of entry to the United States. The director further found that the affidavits the applicant submitted were lacking in probative value. 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 provides an explanation for the apparent discrepancy regarding her initial date of entry to the United States, noting that the person who prepared an asylum application and a Form EOIR-40, Application for Suspension of Deportation, on her behalf never asked her for her date of *first* entry. She states that she first entered the United States in May 1980 and asserts that she provided corroborative evidence that she continuously resided in the United States in an unlawful status for the duration of the requisite period. The applicant provides copies of affidavits that were previously submitted, but no new evidence, in support of the appeal.

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.* 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.

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 April 17, 2005. The applicant signed this form under penalty of perjury, certifying that the information he provided is true and correct. 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 the following addresses in Long Beach, California: [REDACTED] (January 1980 until February 1981); [REDACTED] (March 1981 to January 1986); and [REDACTED] (February 1986 to December 1989. At part #33, where asked to all of her employment in the United States, the applicant indicated that she worked for Graphic Print, Inc. in Gardena, California from April 1981 until May 1988. Furthermore, at part #31 of the Form I-687 application, where applicants were asked to list all affiliations or associations with clubs, organizations, churches, unions, businesses, etc., the applicant listed “None.” Where asked to list all absences from the United States dating back to January 1, 1982, the applicant indicated that she traveled to Mexico for a vacation from December 1987 until January 1988. During her interview with a CIS officer on December 7, 2005, the applicant added

that she also went to Mexico for a vacation in January 1982 and returned to the United States in February 1982. The record contains a copy of the birth certificate for the applicant's son, who was born in Mexico on January 24, 1982. The birth certificate lists a residential address in Mexico for the applicant and her spouse.

As noted above, the applicant has the burden of proving by a preponderance of the evidence that she has resided in the United States for the requisite period. 8 C.F.R. § 245a.2(d)(5). Pursuant to the regulation at 8 C.F.R. § 245a.2(d)(3) documentation an applicant may submit to establish proof of continuous residence in the United States may include, but is not limited to: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts or letters. An applicant may also submit any other relevant document pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided a letter from her alleged former employer and four declarations.

In a letter dated January 27, 2005, [REDACTED] stated that he is the manager of "The Graphic Print, Inc." He stated that in this capacity, he is familiar with the applicant's employment history with the company. He declared that the applicant was employed by the company on a full-time basis as a packing employee from April 1981 until May 1988, with no lay-offs or gaps in employment. He also provided the applicant's current residential address. The letter is on [REDACTED] personal stationery rather than on company letterhead, and it is not notarized. It also fails to meet certain regulatory standards set forth at 8 C.F.R. § 245a.2(d)(3)(i), which provides that letters from employers must include the applicant's address at the time of employment; her duties with the company; whether the information was taken from official company records and where records are located and whether CIS may have access to the records; if records are unavailable, an affidavit form-letter stating that the employment records are unavailable may be accepted which shall be signed, attested to by the employer under penalty of perjury and shall state the employer's willingness to come forward and give testimony if requested. [REDACTED] letter does not meet these standards. He does not indicate the source of the information he provides or state that the company employed him during the requisite period. He also failed to provide the applicant's address for the claimed period of employment. Because of these significant deficiencies, this letter is lacking in probative value.

The applicant provided a declaration from [REDACTED], who stated that she met the applicant for the first time in August 1980 "in Compton at a get together at house." Ms. [REDACTED] stated that she herself resided in Compton, California from January 1982 and May 1988 and provided information regarding her employment during this period. [REDACTED] stated that she knew the applicant was living in the United States during the requisite period because she saw her "at children's birthday parties, at product meetings, and in the homes of other friends of ours." [REDACTED] failed to provide any specific and verifiable testimony relating to the applicant's residence in this country for the relevant time period, such as the applicant's address(es) of residence. She did not identify how she dates her acquaintance with the applicant or state how frequently she had contact with the applicant during the requisite period. Although not required to do so,

provided a copy of her California identification card and Permanent Resident Card as proof of her identity, but she did not provide a contact telephone number, so her statements are not readily amenable to verification. Because of the lack of detail regarding the events and circumstances of the applicant's residence in the United States, this declaration can be given little weight as corroborative evidence.

The applicant submitted a second declaration from [REDACTED], who stated that she first met the applicant in Long Beach, California in September 1980. She stated that she lived and worked in Long Beach, California between January 1982 and May 1988 and provided her residential address for this period. She stated that she knew the applicant was living in the United States between 1982 and May 1988 because her son attended school with the applicant's oldest son, [REDACTED]. She stated that she saw the applicant often during these years because their children grew up together and remain friends. Ms. [REDACTED] indicated that she attended birthday parties at the applicant's home and would visit there to pick up and drop off the applicant's son. Although not required to do so, [REDACTED] did not provide proof of her identity. Her declaration is not notarized and she did not provide a telephone number where she could be contacted for verification. Although she claims to have known the applicant since 1980, she failed to provide any specific and verifiable testimony relating to the applicant's residence in the United States for the relevant time period, such as the applicant's address, or the name of the school her son attended with the applicant's son. The record does show that the applicant has a son named [REDACTED] born in Mexico in September 1976. However, if he attended public school in Long Beach, California throughout the requisite period, it is reasonable to expect that the applicant would be able to obtain documentary proof from the school. Because of the lack of detail and lack of corroborating evidence, this letter has limited probative value.

The applicant submitted a third declaration from [REDACTED], who stated that she first met the applicant in February 1981 in Lynwood, California. She states that she knows the applicant resided in the United States during the requisite period because "she was my babysitter when I was small." She stated that she herself had a baby in 1987 and that the applicant babysits her own children sometimes. [REDACTED] provided her own addresses of residence for the requisite period and stated that she was a student at Will Rogers Elementary School when she met the applicant. While [REDACTED] attested to the applicant's residence in this country since 1981, she failed to provide any detailed and relevant information that would tend to corroborate the applicant's claim of continuous residence in the United States for the entire requisite period. She does not indicate how she dates her acquaintance with the applicant, how frequently she saw her during the requisite period, or whether there were any extended periods of time in which she **did not see her**. [REDACTED] was ten years old in 1981, but it seems implausible that the applicant babysat her throughout the entire relevant period. She provided a copy of her California driver license as proof of her identity, but did not provide a contact telephone number where she could be readily reached for verification. Therefore, this declaration suffers from many of the same deficiencies as those discussed above, and its probative value is limited.

Finally, the applicant submitted a declaration from [REDACTED] who states that he met the applicant for the first time in April 1980 at a birthday party. He provided information regarding his own employment and addresses of residence during the requisite period, and stated that he knows the applicant resided in

the United States during this period because "we used to see each other at family reunions." [REDACTED] declaration is not notarized and he did not provide a contact telephone number where he could be readily reached for verification. [REDACTED]'s statement is significantly lacking in detail. He does not state with specificity how he met the applicant, i.e., at whose birthday party, or how he dates his acquaintance with her. He refers to seeing her at "family reunions" but does not indicate that he is family member of the applicant or state how frequently he had contact with her during the relevant period. Also failed to provide any relevant, verifiable testimony regarding the events and circumstances of the applicant's residence in the United States, such as her address. For these reasons, [REDACTED]'s declaration can also be given only minimal weight as corroborating evidence.

The applicant's administrative record also contains a Form EOIR-40, Application for Suspension of Deportation, submitted by the applicant in 1997. At part #16, the applicant was requested to list all locations of residence in the United States during the previous years, or dating back to 1987. The applicant indicated addresses in the United States dating back to February 1989 only. At part #19 of the Form EOIR-40, the applicant stated that she first entered the United States with a visa on February 22, 1989. The applicant signed this form under penalty of perjury. The applicant's previous claim that she first entered the United States in 1989 seriously undermines the validity of her current claim that she has continuously resided in the United States since 1981. It is also noted that the applicant has not acknowledged in the instant proceeding that she made an entry to the United States in 1989.

The AAO also notes other inconsistencies between information provided by the applicant in the instant proceeding that that provided in previous matters. For example, none of the addresses the applicant provided on the Form EOIR-40 for the period of February 1989 to March 1997 are consistent with the addresses provided for the same period on her Form I-687 application. Similarly, the applicant indicated on her Form EOIR-40 that she was employed by "Staff Control, Inc." from 1992 until the date she signed the application in March 1997. This employer is not listed on the applicant's Form I-687. 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).

The director denied the application on July 22, 2006. In denying the application, the director referred to the inconsistencies in the record regarding the date of the applicant's initial entry to the United States and found that the applicant's testimony in this proceeding was not credible. The director acknowledged the declarations submitted by the applicant, but found that the declarants did not establish that they had personal knowledge of the applicant's residence in the United States. 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 asserts:

[T]he first time I filed Form I-589 and also Form EOIR 40 the person who filled the application for me never questioned me when was my first entry which was on May of 1980, he only asked my last entry which was on February 22, 1989. In order to process this kind of application they only needed the last 10 years.

The applicant further asserts that she provided corroborative evidence of her entry to the United States prior to January 1, 1982, and continuous residence and physical presence throughout the requisite periods.

The applicant's assertions are not persuasive. As noted above, the Form EOIR-40 specifically requested the applicant's residences in the United States dating back 10 years from the date she filed the application in March 1997, and requested the date of her *first entry* to the United States. If the applicant entered and resided in the United States prior to 1989, this information should have been reflected on her Form EOIR-40 application. 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 her burden of proof with a broad range of evidence pursuant to 8 C.F.R. § 245a.2(d)(3). However, this applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88. She has submitted attestations from one employer and four individuals that lack detail and can be given very little weight as corroborating evidence. Furthermore, it is noted that the applicant states on appeal that she first entered the United States in May 1980, while she previously indicated that her first entry was in January 1980.

The existence of conflicting testimony relating to critical elements of the applicant's residence and the lack of sufficiently detailed evidence that provides relevant and material testimony to corroborate her claim of continuous residence for the period in question 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. The applicant has failed to submit sufficient probative documentation to meet her burden of proof in establishing that he has resided in the United States since prior to January 1, 1982 by a preponderance of the evidence as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M-*, 20 I&N Dec. at 77.

Given the applicant's failure to provide sufficient credible evidence to corroborate her claim of residence, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 as required under section 245A(a)(2) of the Act. 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.