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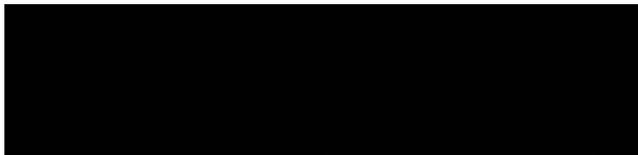
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
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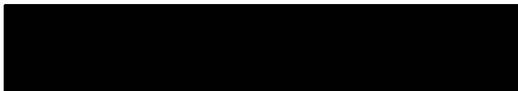
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IN RE:

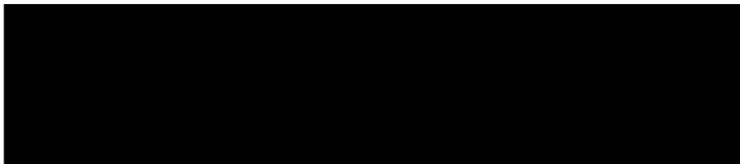
Applicant:



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.

A handwritten signature in black ink, appearing to read "Robert P. 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 District Director, Miami, Florida. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant did not establish that she continuously resided in the United States for the duration of the requisite period.

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, on June 8, 2005. On September 5, 2006, the director issued a Notice of Intent to Deny (NOID) the application. Counsel for the applicant provided a response on October 4, 2006. Upon review of the record, the director denied the application on November 6, 2006.

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).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "until the date of filing" shall mean 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 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. 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. *See* 8 C.F.R. § 245a.2(d)(6).

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 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.

An applicant for temporary residence under the CSS/Newman Settlement Agreements need only 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 have been physically present in the United States from November 6, 1986 until the date of filing or attempting to file the application.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to establish her entry into the United States prior to January 1, 1982 and continuous unlawful residence since such date through the date the application was filed as defined above.

On the Form I-687, the applicant indicated she had last entered the United States in May of 1988. The applicant listed her address for the pertinent period as [REDACTED], Hialeah, Florida from October 1980 to October 1988. The applicant does not list any affiliations, organizations, or churches on the Form I-687. Neither does the applicant list any employment for the pertinent time period of January 1982 to May 4, 1988.

The record also contains a Form I-687 filed April 4, 1991. The April 4, 1991, Form I-687 lists the applicant's address during the pertinent period as [REDACTED], Boyton Beach, Florida from December 1980 to October 1988. The Form I-687 also indicates the applicant was self-employed as a maid during the same time period and repeats the Boyton Beach, Florida address.

The record also includes a March 21, 1991 letter written by [REDACTED] whose address is [REDACTED] [REDACTED], Hialeah, Florida. Ms. [REDACTED] indicates that she became acquainted with the applicant in 1983, that she met the applicant while the applicant resided at [REDACTED] Boynton Beach, Florida, and that the applicant left the United States to return to Peru on two occasions, once in February 1984 and again in June 1987.

The record further contains copies of consecutively numbered receipts,¹ issued to the applicant beginning with number 9525 for \$200 rent received for an efficiency at [REDACTED] dated January 8, 1980 and ending with number 9550 for \$200 rent received for an efficiency at [REDACTED] dated December 7, 1981. The record further includes a copy of a lease executed the first day of June 1986 signed by the applicant for premises located at [REDACTED] Hialeah, Florida.

The applicant has also provided a May 17, 2005 affidavit signed by [REDACTED] stating that she has known the applicant since 1985. Ms. [REDACTED] declares that she first met the applicant in Lima, Peru, met her again when the affiant lived in Massachusetts, and then continued the friendship in Miami, Florida. The applicant has also included copies of her Internal Revenue Service (IRS) Forms 1040, U.S. Individual Income Tax Return for 1986 through 2005. The record also includes an undated letter from Reverend [REDACTED] of the Our Lady of the Divine Providence Catholic Church certifying that the applicant has been a member of the parish since August 1986.

The AAO finds that the applicant has not provided consistent evidence regarding her claimed residence beginning in 1980. The applicant's first filed Form I-687 notes the applicant's address in 1980 is at [REDACTED] Boynton Beach, Florida. The March 21, 1991 letter written by [REDACTED] notes that the applicant resided at [REDACTED] Boynton Beach, Florida when the letter writer first became acquainted with the applicant in 1983. Moreover, [REDACTED] states that her address is 480 [REDACTED], Hialeah, Florida.

In the later-filed Form I-687 that is the subject of this appeal, the applicant contradicts her earlier submitted Form I-687 by stating that she lived at [REDACTED], Hialeah, Florida beginning in October 1980 and provides copies of consecutive numbered receipts beginning in January 1980 issued to her for the rental of an efficiency at this address. The applicant does not provide a copy of a lease for the [REDACTED], Hialeah, Florida address for the time period between January 1980 and June 1986; but does provide a copy of a lease agreement for this address beginning in June 1986. The applicant's documented U.S. address with the IRS also begins in 1986.

The AAO does not find consistent credible evidence of the applicant's entry into the United States prior to January 1, 1982 and continuous unlawful residence up to 1986. For the reasons just discussed, the affidavits presented and the rental receipts have little probative value due to the unresolved inconsistencies in the record regarding the applicant's residence prior to June 1986. The AAO has considered all of the documents submitted into the record of proceedings and has weighed the evidentiary value of each document and the evidentiary value of all of the documents considered in the aggregate. The AAO finds that the evidence of record is insufficient to support a conclusion that the applicant entered the United States prior to January 1, 1982 and continued to reside unlawfully in the United States for the entire period required for approval of this application.

The absence of sufficient credible and probative documentation to corroborate the applicant's claim of continuous residence for the requisite period seriously detracts from the credibility of her claim. Pursuant

¹ The record does not contain a copy of a receipt numbers [REDACTED] and [REDACTED]

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 earlier discussed limitations of the supporting documentation, it is concluded that the applicant has failed to meet her burden of proof and failed to establish continuous residence in an unlawful status for the entire 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. The appeal will be dismissed.

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