

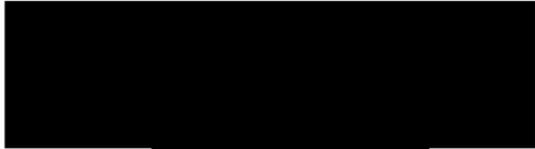
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U.S. Citizenship
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FILE: [REDACTED]
MSC-06-047-13041

Office: ATLANTA

Date: JUL 30 2008

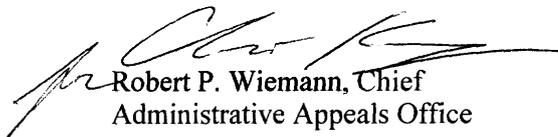
IN RE: Applicant: [REDACTED]

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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.


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, Atlanta. 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 her eligibility for temporary resident status and denied the application.

On appeal, the applicant stated that she submitted most of the required documents; she does not have medical records prior to 2001 and does not have dental records; she did not have a Social Security number; and her jobs involved braiding, babysitting, farm work, yard work, cleaning, et cetera, and she was always paid in cash. The applicant asked that the affidavits she submitted be accepted as evidence of her residence in the United States during the requisite period.

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).

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) 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, 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.

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 November 16, 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 listed only the following address during the requisite period: 1565 [REDACTED] Georgia from 1981 to 1989. At part #33 where applicants were asked to list all employment in the United States since entry, the applicant indicated only that she was a self-employed braider in Atlanta, Georgia from 1981 to present.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided voluminous documentation that does not relate to the requisite period. The applicant also provided five attestations. The form declaration from [REDACTED] states that the declarant first met the applicant in September 1981 when the applicant came to visit the declarant in Denver, Colorado. The declarant stated that she has known the applicant's parents since the applicant was a child but did not meet the applicant until she came to the United States. This declaration fails to indicate that the applicant resided in the United States at any time. The declaration merely states that the applicant visited Denver in September 1981. Therefore, this declaration has no probative value in determining whether the applicant has established that she resided in the United States during the requisite period.

The applicant also provided a form declaration from Terry Norris, which states that the declarant met the applicant “around the neighborhood” in 1982. The declarant indicated that his current address is in Lithonia, Georgia. On the declaration form, when asked how he first met the applicant, the declarant stated, “assistant with house cleaning.” This information is inconsistent with the Form I-687 application, where the applicant failed to list house cleaning when asked to list all employment in the United States. This inconsistency casts some doubt on the declarant’s ability to confirm that the applicant resided in the United States during the requisite period. In addition, this declaration does not state that the applicant resided in the United States at any time other than in 1982. Lastly, the declaration fails to provide detail regarding the applicant’s dates of residence in the United States, her frequency of contact with the declarant, and whether the applicant was absent from the United States during the requisite period. As a result of these deficiencies, this declaration will be given no weight in determining whether the applicant has established that she resided in the United States during the requisite period.

The applicant submitted a declaration from [REDACTED] which states that the declarant met the applicant in July 1980 in Georgia when the applicant was doing yard work in the declarant’s area. The declarant stated that the applicant “does great [with] keeping my yard in good condition.” This information is inconsistent with the Form I-687 application, where the applicant failed to list yard work when asked to list all employment in the United States and where she indicated that she did not begin residing in the United States until 1981. These inconsistencies cast doubt on the declarant’s ability to confirm that the applicant resided in the United States during the requisite period. In addition, this declaration does not specifically state that the applicant resided in the United States during the requisite period at any time other than in July 1980. Lastly, the declaration fails to provide detail regarding the applicant’s dates of residence in the United States, her frequency of contact with the declarant, and whether the applicant was absent from the United States during the requisite period. As a result of these deficiencies, this declaration will be given no weight in determining whether the applicant has established that she resided in the United States during the requisite period.

The applicant provided a declaration from [REDACTED] which states that the declarant met the applicant in Ruston, Louisiana in 1982 when they planted pine trees for [REDACTED] and harvested peaches for [REDACTED]. The declarant stated that the applicant was his coworker in 1982 and is now a family friend. This information is inconsistent with the applicant’s Form I-687, where she failed to indicate that she performed agricultural work when asked to list all employment during the requisite period. In addition, it is noted that [REDACTED] approximately 542 miles from Marietta, Georgia, where the applicant indicated on her Form I-687 application that she resided throughout the requisite period. The two towns are separated by more than an eight-hour drive and, therefore, it is not plausible that the applicant resided in Marietta, Georgia while being employed in Ruston, Louisiana. These inconsistencies cast doubt on the declarant’s ability to confirm that the applicant resided in the United States during the requisite period. In addition, this declaration does not indicate that the applicant resided in the United States at any time other than in 1982. Lastly, the declaration fails to provide detail regarding the applicant’s dates of residence in the United States, her frequency of contact with the declarant, and whether the applicant was absent

from the United States during the requisite period. As a result of these deficiencies, this declaration will be given no weight in determining whether the applicant has established that she resided in the United States during the requisite period.

The applicant also provided a declaration from [REDACTED], which states that the declarant met the applicant in her apartment complex in June 1986, when the applicant was braiding hair. The declarant stated that they remained “casual friends as long as [the applicant] came to the apartment complex, after that I did not see [the applicant] for a while until recently.” This declaration does not state that the applicant resided in the United States at any time other than in June 1986. In addition, the declaration fails to provide detail regarding the applicant’s dates of residence in the United States, her frequency of contact with the declarant, and whether the applicant was absent from the United States during the requisite period. As a result of these deficiencies, this declaration will be given very little weight in determining whether the applicant has established that she resided in the United States during the requisite period.

In denying the application the director concluded that the applicant had not established her eligibility for temporary resident status.

On appeal, the applicant stated that she submitted most of the required documents; she does not have medical records prior to 2001 and does not have medical records; she did not have a Social Security number; and her jobs involved braiding, babysitting, farm work, yard work, cleaning, et cetera, and she was always paid in cash. The applicant asked that the affidavits she submitted be accepted as evidence of her residence in the United States during the requisite period.

In summary, the applicant has submitted five attestations that fail to indicate that she resided in the United States during the requisite period, are inconsistent with the information on her Form I-687 application, or lack sufficient detail. 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 Form I-687 application and the documents the applicant submitted, and given her reliance upon documents with minimal or no 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.