

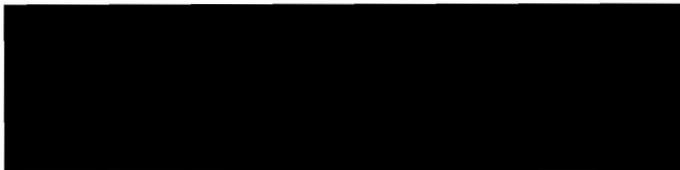


U.S. Citizenship  
and Immigration  
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FILE:

MSC 04 362 10002

Office: Los Angeles

Date:

MAR 12 2008

IN RE:

Applicant:



PETITION:

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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter 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, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director determined that the applicant had not demonstrated that she had continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that she attempted to file a Form I-687, Application for Status as a Temporary Resident, with the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS) in the original legalization application period between May 5, 1987 to May 4, 1988. Therefore, the district director concluded that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and section 245A of the Immigration and Nationality Act (Act) and denied the application.

On appeal, the applicant indicates that she was submitting proof that affiants who submitted documentation in support of her claim of residence in this country since prior to January 1, 1982 were also present and residing in the United States during the requisite period. The applicant submits documents in support of her 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 presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the alien attempted to file a completed Form I-687 application and fee or was caused not to timely file, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. Paragraph 11, page 6 of the CSS Settlement Agreement and paragraph 11, page 10 of the Newman Settlement Agreement.

An alien applying for adjustment of status 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 including affidavits 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 his or 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 a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on September 26, 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 indicated that she lived at [REDACTED] in Canoga Park, California from 1980 to 1981, [REDACTED] in Sepulveda, California from 1981 to 1985 and [REDACTED] in Panorama City, California from 1985 to at least the termination of the legalization application period on May 4, 1988. At part #33 of the Form I-687 application where applicants were asked to list all employment since entry, the applicant failed to list any employment during the requisite period.

A review of the record reveals that the applicant had previously filed another separate Form I-687 application on May 4, 1988. At part #33 of this Form I-687 application (the difference in the numbering of parts on the two separate Form I-687 applications is explained by the fact that the application was revised as of April 30, 2004) where applicants were asked to list all residences in the United States since first entry, the applicant listed [REDACTED] in Canoga Park, California from November 1981 to March 1983, [REDACTED] in Northridge, California from March 1983 to January 1984, [REDACTED] in Sepulveda, California from January 1984 to February 1987, and [REDACTED] in Panorama City, California from February 1987 to May 4, 1988, the date the Form I-687 application was submitted. At part #36 of the Form I-687 application where applicants were asked to list employment in the United States since first entry, the applicant listed employment as a housekeeper for [REDACTED] in Northridge, California from November

1981 to June 1985, assembly for [REDACTED] in Canoga Park, California from June 1984 to June 1985, and machine operator for [REDACTED] in Chatsworth, California from June 1985 to that date the Form I-687 application was filed on May 4, 1988.

The fact that the applicant's listing of her addresses of residence on the Form I-687 application filed on May 4, 1988 did not correspond to the subsequent listing of her addresses of residence on the Form I-687 application submitted on September 26, 2004 seriously diminished her credibility as well as the credibility of her claim of residence in the United States since prior to January 1, 1982. Both the applicant's credibility and the credibility of her claim of residence in this country are further diminished by the fact that employment listed by the applicant on the Form I-687 application filed on May 4, 1988 was subsequently omitted from the Form I-687 application submitted on September 26, 2004.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted two affidavits that are signed by [REDACTED] and [REDACTED] respectively. The affiants both stated that they had personal knowledge that the applicant resided in Canoga Park, California from 1981 to 1991. The affiants noted that the basis of their knowledge regarding the applicant's residence was based upon the fact that they were neighbors who became good friends and have remained in contact since. However, the affiants' testimony that the applicant resided only in Canoga Park, California during the requisite period is contradicted by the applicant's testimony that she also resided in Northridge, California, Sepulveda, California, and Panorama City, California as well as Canoga Park, California during the period in question in the two Form I-687 applications contained in the record.

The applicant included a letter that is attributed to [REDACTED] but is not signed. In his letter, Mr. [REDACTED] stated that he had known the applicant since January 1980 and he subsequently hired her to work as an assembler at Modulite Corporation in February 1982. [REDACTED] noted that the applicant worked under his supervision until 1989 when she voluntarily quit her job to find a job closer to her home. However, [REDACTED] failed to attest to the circumstances under which he first met the applicant in January 1980 or the nature of his relationship with her until he purportedly hired the applicant to work at Modulite Corporation in February 1982. In addition, [REDACTED] failed to provide either the applicant's address of residence during that period she was employed by Modulite Corporation from February 1982 to 1989 or pertinent information relating to the availability of company records as required by 8 C.F.R. § 245a.2(d)(3)(i). Moreover, [REDACTED]'s testimony that the applicant worked for Modulite Corporation from February 1982 to 1989 directly contradicted the applicant's own testimony that she worked for this enterprise from June 1984 to June 1985 at part #36 of the Form I-687 application submitted on May 4, 1988.

The applicant provided photocopies of an envelope postmarked December 30, 1982, that was purportedly mailed by the applicant. The envelope postmarked December 30, 1982 listed the applicant's return address as [REDACTED] in Northridge, California. However, it must be noted that the applicant failed to include this return address in the listings of her addresses of residence on both of the Form I-687 contained in the record. The applicant failed to provide any explanation as to why she listed a return address that was not her address of residence on the date the envelope was mailed.

The applicant submitted a photocopied page of what appeared to be immunization records. Nevertheless, this document has no probative value as it did not contain any information either identifying or relating to the applicant.

The record shows that the district director issued a Form I-72, Request for Additional Evidence, to the applicant on June 24, 2005. The applicant was asked to provide evidence to demonstrate the identity of affiants who had provided supporting documentation as well as proof that the affiants resided in the United States prior to January 1, 1982. Although such information may be useful in determining whether an affiant could provide credible testimony relating to an applicant's residence, a review of the pertinent statutes and regulations finds no requirement that affiants must establish either their identity or their residence in this country for the requisite period. Further, a review of the record reveals that the applicant complied with the district director's request and provided evidence establishing that affiants who had provided supporting documentation were in a position to provide relevant testimony relating to the applicant's residence in this country for the period in question. Nevertheless, it must be noted that such affiants have provided testimony that is of minimal probative value as it lacks sufficient detail and verifiable information and is also contradictory to the applicant's testimony as it relates to her addresses of residence in the United States since prior to January 1, 1982.

The district director determined that the applicant had failed to submit sufficient credible evidence establishing her continuous residence in this country since prior to January 1, 1982, and, therefore, denied the application on March 21, 2006.

On appeal, the applicant submits a new letter of employment that is signed by [REDACTED] Mr. [REDACTED] states that he had known the applicant since January 1980 when they were introduced by a mutual friend at a picnic while he was vacationing in Mazatlan, Mexico. [REDACTED] declares that he then met the applicant in the United States at a mall in Canoga Park, California in October 1981 and learned that she came to California in search of work because of the lack of opportunity in Mexico. Mr. [REDACTED] reiterates the testimony that he subsequently hired the applicant to work as an assembler at Modulite Corporation in February 1982 and that she worked under his supervision until 1989 when she voluntarily quit her job to find a job closer to her home. However, [REDACTED] again fails to provide either the applicant's address of residence during that period she was purportedly employed by Modulite Corporation from February 1982 to 1989 or pertinent information relating to the availability of company records as required by 8 C.F.R. § 245a.2(d)(3)(i). Additionally, [REDACTED] testimony that the applicant worked for Modulite Corporation from February 1982 to 1989 once again contradicted the applicant's own testimony that she worked for this enterprise from June 1984 to June 1985 at part #36 of the Form I-687 application submitted on May 4, 1988.

The applicant provides two new affidavits that are signed by [REDACTED] and [REDACTED] respectively. The affiants again attest to their personal knowledge of the applicant's residence and physical presence in Canoga Park, California since 1981. The affiants note that the basis of their knowledge regarding the applicant's residence was the fact that they were good friends and have remained in contact since 1981. However, the affiants' testimony that the applicant resided only in Canoga Park, California since prior to January 1, 1982 contradicted the applicant's testimony that she

also resided in Northridge, California, Sepulveda, California, and Panorama City, California as well as Canoga Park, California during the requisite period in the two Form I-687 applications contained in the record.

The absence of sufficiently detailed supporting documentation, the existence of testimony in the supporting documents that does not correspond to the applicant's testimony, and the fact that the applicant herself provided contradictory testimony relating to her addresses of residence and employment history all seriously undermine the credibility of her claim of residence in this country for the requisite period, as well as the credibility of the documents submitted in support of such claim. Pursuant to 8 C.F.R. § 245a.2(d)(3), 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 credible documentation to meet her burden of proof in establishing that she has resided in the United States since prior to January 1, 1982 to May 4, 1988 by a preponderance of the evidence as required under both 8 C.F.R. § 245a.2(d)(3) and *Matter of E- M-*, 20 I&N Dec. 77 (Comm. 1989).

Given the applicant's reliance upon documents with minimal or no probative value and her own contradictory testimony, 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 through May 4, 1988 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.