

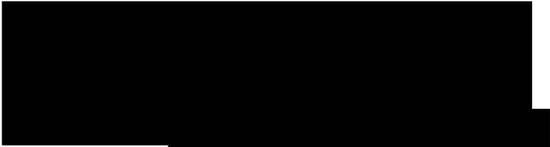
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U.S. Citizenship  
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FILE: [REDACTED]  
MSC-05-237-14211

Office: LOS ANGELES

Date: **MAR 26 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 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, counsel for the applicant argued that the director failed to consider the affidavits provided by the applicant.

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.* 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 May 25, 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 the following addresses in Santa Ana, California during the requisite period: [REDACTED] from December 1979 to November 1982; [REDACTED] from November 1982 to January 1984; [REDACTED] from January 1984 to November 1986; and [REDACTED] from November 1986 to February 1990. At part #33 where applicants were asked to list all employment in the United States since entry, the applicant listed the following positions during the requisite period: Babysitter for [REDACTED] from February 1980 to January 1987; machine operator for Kraft Polymers, Inc. from December 1981 to October 1982; machine operator for Irridelco Drip Corporation at 8405 Artesia Blvd., Buena Park, California from November 1982 to December 1983; babysitter for Teresa Medina at the 1209 S. Flower St. address from December 1983 to September 1984; babysitter for Rosa Estrada at the 1209 S. Flower St. address from December 1983 to September 1986; machine operator for TNT Plastic Moldin, Inc. from October 1986 to December 1986; machine operator for AFM Engineering from December 1986 to May 1987; machine operator for [REDACTED] from July 1987 to January 1988; and babysitter for [REDACTED] from January 1988 to January 1990.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided multiple documents. The applicant provided two attestations that failed to confirm that she resided in the United States during the requisite period. These include the affidavits from [REDACTED] and [REDACTED]

The applicant also included multiple attestations from past employers that fail to conform to regulatory standards for letters from employers, as stated in 8 C.F.R. § 245a.2(d)(3)(i). Specifically, the affidavit from [REDACTED] dated January 20, 1991; and the affidavits from [REDACTED] and [REDACTED] do not include the applicant's address at the time of employment, whether or not the information was taken from records, where the records are located, and whether CIS may have access to the records. The declarations from [REDACTED] and [REDACTED] do not include the applicant's address at the time of employment, duties with the company, whether or not the information was taken from official company records, where the records are located, and whether CIS may have access to the records.

The applicant provided an affidavit from [REDACTED] dated March 8, 2004. In this affidavit, the affiant stated that she resides at the [REDACTED] address, and that the applicant has resided in the United States since 1980. The affiant stated that the applicant took care of the affiant's children for seven years, and the affiant and the applicant have kept in "constant contact" with each other since then. This affidavit fails to provide detail regarding when and how the affiant met the applicant, and the location where the applicant resided during the requisite period. Specifically, this affidavit fails to state that the applicant resided at the affiant's address at [REDACTED] for more than three years during the requisite period, as indicated on her Form I-687. As a result, this affidavit is found to lack sufficient detail to confirm that the applicant resided in the United States during the requisite period.

The applicant submitted an affidavit from [REDACTED] dated April 8, 2003. This affidavit states that the applicant has lived in Santa Ana, California since approximately 1979. The affiant stated that she can verify this information due to the fact that the applicant left their home town in Mexico about two years before the affiant. On the affiant's arrival to California in 1981, the affiant continued a close friendship with the applicant. The affiant stated that, at that time, the applicant resided at [REDACTED] in Santa Ana. This is inconsistent with the information provided on the applicant's Form I-687, where the applicant indicated that she did not begin living at the [REDACTED] address until November 1986. This inconsistency calls into question whether the affiant can actually confirm that the applicant resided in the United States during the requisite period.

The applicant provided an affidavit from [REDACTED] in which the affiant stated that he has known the applicant "since she was a little girl" because he and the applicant are from the same part of Mexico. The affiant stated that he personally knows that the applicant has been living in the United States since 1979 because he is very close to the applicant's family. The affiant stated

that he and the applicant see each other at least once per month. This affidavit fails to include detail regarding how the affiant met the applicant, and the region of the United States in which she resided during the requisite period. As a result, this affidavit is found to lack sufficient detail to confirm that the applicant resided in the United States during the requisite period.

The applicant provided a form affidavit from [REDACTED] which states that the applicant resided in Santa Ana, California from December 1980 to September 1996. The affiant stated that she is able to determine the date of the beginning of her acquaintance with the applicant because her and the applicant's "families have been friends all these years [sic]." The affiant stated that the longest period during the described residence when the affiant had not seen the applicant was less than a week. This affidavit fails to include detail regarding when the affiant met the applicant, and the nature of their contact during the requisite period. As a result, this affidavit is found to lack sufficient detail to confirm that the applicant resided in the United States during the requisite period.

The applicant provided a form affidavit from [REDACTED] which states that the applicant resided in Santa Ana, California from December 1980 to September 1996. The affiant stated that he is able to determine the date of the beginning of his acquaintance with the applicant because he and the applicant have been friends "all these years." The affiant stated that the longest period during the described residence when the affiant had not seen the applicant was less than a week. This affidavit fails to include detail regarding how and when the affiant met the applicant, and the nature of their contact during the requisite period. As a result, this affidavit is found to lack sufficient detail to confirm that the applicant resided in the United States during the requisite period.

The applicant provided an affidavit from [REDACTED], also known as [REDACTED], dated April 29, 2005. The affidavit states that the affiant lives at the [REDACTED] address and that she has known the applicant since birth because they are related. The affiant stated that she knows the applicant has been living in California since 1979. The affiant stated that from December 1983 to September 1984 the applicant worked for the affiant as a babysitter. The affiant stated that she has seen the applicant at least four times a year since then for family reunions. This affidavit fails to include detail regarding how the applicant and the affiant are related, and regarding where the applicant lived during the requisite period. Specifically, this affidavit fails to confirm that the applicant resided at the affiant's address at 1209 S. Flower St. for more than three years during the requisite period, as stated on the applicant's Form I-687. As a result, this affidavit is found to lack sufficient detail to confirm that the applicant resided in the United States during the requisite period.

The applicant provided an affidavit from [REDACTED] dated May 5, 2005. This affidavit states that the affiant has known the applicant since they "used to live in Mexico." In 1982 the applicant and the affiant met again in Santa Ana, California at the applicant's brother's wedding. The affiant stated, "I personally now [sic] that [the applicant] has been living here since 1979 until today." This affidavit appears to be internally inconsistent, since the applicant stated that

she became reunited with the applicant in the United States in 1982, yet she also stated that she has personal knowledge of the applicant's residence in the United States since 1979. In addition, this affidavit fails to include detail regarding how and when the affiant met the applicant, their frequency of contact, and the region in which the applicant lived in the United States. As a result, this affidavit is found to lack sufficient detail to confirm that the applicant resided in the United States during the requisite period.

The applicant provided a form affidavit from [REDACTED] dated October 26, 2001, which states that the affiant has personal knowledge that the applicant has resided in Santa Ana, California from May 16, 1982 to present. The affiant stated that she met the applicant through friends at a relative's house, and they have been friends ever since. This affidavit lacks detail regarding the nature and frequency of the affiant's contact with the applicant during the requisite period. However, this affidavit constitutes some evidence supporting the applicant's claim to have resided in the United States during the requisite period, from May 16, 1982 until the applicant attempted to apply for temporary resident status.

The applicant provided a rent receipt made out to [REDACTED] and dated June 19, 1980. She also provided a money order receipt from Republic National Bank building in Dallas, Texas dated May 19, 1980. These receipts do not include an address for the applicant. Therefore, these documents do not serve as evidence of the applicant's residence in the United States.

The applicant provided pay statements for California Labor Camp dated April 10, 1980 and May 12, 1980 listing the employee as [REDACTED]. These documents are inconsistent with the applicant's statements on her Form I-687 where she indicated that her only employment in the United States prior to December 1981 was babysitting. In addition, the record contains no evidence indicating the applicant has ever used the middle initial "R." These inconsistencies call into question the validity of the document and, as a result, call into question the applicant's claim to have resided in the United States during the requisite period.

The applicant provided multiple additional pay stubs to document her employment during the requisite period. The applicant provided three pay stubs of employee [REDACTED] for employment with Furniture by [REDACTED] for the weeks ending May 23, 1987; May 30, 1987; and June 13, 1987. These documents are inconsistent with the information provided on the applicant's Form I-687, where the applicant indicated she did not begin working at B.P. John until July 1987. This inconsistency calls into question the authenticity of these documents and the applicant's claim to have resided in the United States throughout the requisite period.

The applicant provided pay stubs for employee [REDACTED] with A F M Engineering, Inc. for the pay periods ending December 15, 1986; December 31, 1986; January 15, 1987; January 31, 1987; February 15, 1987; February 28, 1987; March 15, 1987; March 31, 1987; April 15, 1987; April 30, 1987; May 15, 1987; and May 31, 1987. These pay stubs listed the Social Security number [REDACTED]. The applicant provided an earnings statement for employee [REDACTED] with TNT Plastic Moldings, Inc. for the pay period ending November 18, 1986. This pay

stub listed the employee's Social Security number as [REDACTED]. The applicant provided pay stubs for employment with Global Irrigation Corporation Inc. at [REDACTED], Buena Park, California. It is noted that this address corresponds with the address listed on the applicant's Form I-687 for employer Irridelco Drip Corporation. These pay stubs list the employee's name as [REDACTED] and list the employee's Social Security number as [REDACTED]. The applicant provided a pay stub for employment with Kraft Polymers, Inc. for the pay period ending April 23, 1982. This pay stub lists the employee's name as [REDACTED]. The applicant provided a Form W-2 for 1982 for employment with Global Irrigation Corporation. The Form W-2 lists the employee's name as [REDACTED] and lists her Social Security number as [REDACTED]. The applicant also provided Forms W-2 for 1986, for employment with TNT Plastic Molding, Inc. and A F M Engineering. The Form W-2 for TNT Plastic Molding, Inc. listed the employee name as [REDACTED] and listed her Social Security number as [REDACTED]. The Form W-2 for A F M Engineering listed the employee name of [REDACTED] and listed her Social Security number as [REDACTED]. This documentation tends to show that the applicant resided in the United States during April and May of 1980, during April 1982, from November 1982 to December 1982, and from November 1986 to May 1987.

The record includes another Form I-687 application signed by the applicant on November 6, 1990. Information in this document is inconsistent with the current Form I-687 application. Specifically, the 1990 Form I-687 indicates that the a licant resided at [REDACTED] from January 1979 to November 1982, instead of at [REDACTED] from December 1979 to November 1982 as stated in the current Form I-687. In addition, the 1990 Form I-687 states that the applicant resided at [REDACTED] from November 1982 to November 1983 instead of from November 1982 to January 1984 as stated in the current Form I-687. Lastly, the 1990 Form I-687 states that the applicant resided at [REDACTED] from November 1983 to February 1990 instead of from November 1986 to February 1990 as stated in the current Form I-687. These inconsistencies all call into question the applicant's claim to have resided in the United States throughout the requisite period.

In response to a Form I-72 issued by CIS on November 1, 2005 and requesting that the applicant provide printouts from the Internal Revenue Service (IRS) from 1981 to 1988, the applicant provided a Letter 1722(ICP) listing the names of [REDACTED] and [REDACTED]. This letter lists the Social Security number [REDACTED]. It is noted that this number does not correspond to any of the numbers listed on the Forms W-2 and pay stubs provided by the applicant. The form states that the IRS has no record that the applicant filed a return for tax years 1981 to 1988. This document does not support the applicant's claim to have resided in the United States throughout the requisite period. In addition, the fact that the applicant failed to present evidence that she sought documentation from the IRS under the Social Security numbers listed on her Forms W-2 casts some doubt on the applicant's claim to have resided in the United States during the requisite period.

In denying the application the director noted 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.

On appeal, counsel for the applicant argued that the director failed to consider the affidavits provided by the applicant.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the period from January 1983 to October 1986. She has submitted attestations that fail to conform to regulatory standards, lack sufficient detail, or are inconsistent with the current Form I-687 application. The attestations from [REDACTED], [REDACTED], and [REDACTED] fail to conform to regulatory standards. The attestations from [REDACTED] dated March 8, 2004 and from [REDACTED] dated May 5, 2005; and from [REDACTED] and [REDACTED] lack sufficient detail to confirm that the applicant resided in the United States during the requisite period. The attestation from [REDACTED] dated April 8, 2003 is inconsistent with the current Form I-687.

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 applicant's contradictory statements on her applications and her reliance upon documents with minimal 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.