

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



41

FILE: [REDACTED]
MSC 05 347 12383

Office: SACRAMENTO

Date: **MAR 31 2008**

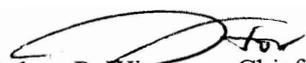
IN RE: Applicant: [REDACTED]

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. 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, Sacramento, and 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's determination was largely based on the applicant's oral testimony provided at her interview, which took place on August 17, 2006. Accordingly, 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 asserts that the director misinterpreted her oral testimony and further claims that she was too young at the time of her first entry into the United States to remember certain facts.

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 Immigration and Nationality Act (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).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and 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 alien 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, 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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that she resided in the United States during the requisite time period. Here, the applicant has failed to meet this burden. The record shows that the applicant did not submit any supporting evidence at the time she filed her Form I-687. Accordingly, a notice of intent to deny was issued on December 6, 2005, informing the applicant that she failed to establish eligibility for temporary resident status. In response, the applicant provided three affidavits none of which helped overcome the intended ground for denial. [REDACTED], in an affidavit dated January 6, 2006, stated that she worked with the applicant's father from 1981 to 1994. Although the affiant stated that she met the applicant when she came to visit her father at work, the frequency of these visits was not discussed, nor did the affiant provide any information indicating that the applicant had resided with her father on a continuous basis during the statutory time period. Similarly, [REDACTED] and [REDACTED], whose affidavits were dated December 26, 2005 and January 11, 2006, respectively, both stated that they worked with the applicant's father from 1981 to 1983. While the affiants stated that they personally came to know the applicant as a result of having worked with her father, they provided no information as to the frequency of their respective encounters with the applicant, nor did they indicate that the applicant was residing with her father on a continuous basis during the statutory period.

The record also shows that the applicant was interviewed on August 17, 2006 by a Citizenship and Immigration Services officer in an effort to determine her possible eligibility for temporary resident status. The applicant provided statements at the interview indicating that she did not reside with her father during the statutory period. Rather, the applicant stated that she came to visit her father about three times per year and remained with him for approximately two weeks each visit. It is noted that the applicant's testimony is consistent with the testimony of the three affiants who claimed to have met the applicant when she came to visit her father. While none of the affiants addressed the issue of the location of the applicant's permanent residence, none specifically stated that the applicant was residing with her

father. Furthermore, the applicant stated at the same interview that she did not commence permanent residence in the United States until 1995.

In a final notice of denial, dated August 17, 2006, the director reiterated the responses provided by the applicant at the prior interview and concluded that the applicant's own testimony suggests that she is ineligible for temporary resident status.

On appeal, the applicant disputes the director's decision, claiming that she was not old enough at the time of her initial entry into the United States to remember her exact age as well as other relevant factors. However, based on the applicant's date of birth, the applicant would have been school age during at least a portion of her purported residence in the United States. Her inability to produce any school documentation as proof of her residence significantly detracts from her credibility, particularly in light of her prior oral testimony, which contradicts her current statements on appeal. 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).

Further, it is unclear why, if the applicant has resided in the United States continuously since prior to January 1, 1982, her list of prior residences in the United States (No. 30 of the Form I-687) starts with the year 1997. Lastly, and most importantly, the applicant clearly stated in No. 32 of her Form I-687 that she consistently departed the United States from 1979 to 1997 to go to Mexico for the purpose of residing there. This response strongly indicates that the applicant resided in Mexico, not in the United States, during the statutory period and that she was only in the United States for the purpose of brief visits. The fact that the applicant provided this information at her interview and now retracts it on appeal in an effort to establish eligibility impugns her credibility and furthers the director's determination that she is not eligible for temporary resident status.

Given the applicant's contradictory statements 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 from prior to January 1, 1982 through the date she attempted to file a Form I-687 application as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E-M-*, 20 I&N Dec. 77. 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.