

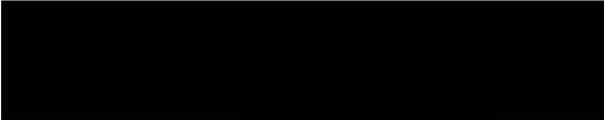
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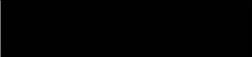
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**U.S. Citizenship
and Immigration
Services**

L1



FILE: 
MSC-05-236-13996

Office: LOS ANGELES

Date: **MAY 13 2008**

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:

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.

A handwritten signature in black ink, appearing to read "R. Wiemann", written over a faint circular stamp.

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, the applicant asserts that she has resided in the United States since 1981. The applicant furnishes additional corroborating evidence.

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 May 24, 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 showed her first address in the United States to be in Los Angeles, California from January 1981 until July 1990. At part #33, she showed her first employment in the United States to be for [REDACTED] in Los Angeles, California from April 1981 until June 1990. This information indicates that the applicant has resided in the United States during the requisite period; however she has failed to corroborate her testimony with probative, credible and reliable evidence.

The applicant submitted numerous documents in support of her application. This proceeding will focus only on those documents that relate to her residence in the United States during the requisite period. The applicant submitted the following corroborating documentation:

- An affidavit from [REDACTED], dated May 10, 2005. This affidavit provides that the applicant was [REDACTED] neighbor at the address [REDACTED] Los Angeles, California from December 1984 until March 1992. Mr. [REDACTED] testimony

that the applicant resided at this address until March 1992 is inconsistent with her application. The applicant's Form I-687 application indicates that she resided at [REDACTED], Los Angeles, California from January 1981 until July 1990. The application further states that in July 1990 she moved to Santa Fe, New Mexico. Moreover, it is unclear from this affidavit whether [REDACTED] is attesting to his residence or the applicant's residence at apartment #12. The applicant's Form I-687 shows that she resided at apartment #26. Finally, [REDACTED] has not presented any corroborating documentation of his residence at this address, such as copies of his utility bill(s), lease agreement(s), driver's license(s) or other identification documents. Given these deficiencies, this document is of minimal probative value as evidence of the applicant's continuous residence in the United States since December 1984.

- An affidavit from A [REDACTED], dated May 9, 2005. This affidavit provides that [REDACTED] has known the applicant from January 1981 until present. Ms. [REDACTED] states, "[w]e were neighbor [sic] since 01/1981 to the present time and she is a good person moral [sic] and social [sic]. We are a good [sic] friendly [sic] all the time." This affidavit does not provide the applicant's address during the requisite period. Nor does it provide the address that [REDACTED] resided at when she was the applicant's neighbor during the requisite period. This information is necessary to corroborate Ms. [REDACTED]'s assertion that she has been the applicant's neighbor since January 1981. Given this deficiency, this affidavit does not have any probative value as evidence of the applicant's continuous residence in the United States since January 1981.
- An affidavit from [REDACTED], dated June 2, 2005. This affidavit provides that Mr. Razo has known the applicant since April 1981 until present. [REDACTED] states, "I have known [REDACTED] . . . since April of 1981 to the present time at a family Birthday party. Since April of 1981 to the present time we constantly communicate with one another either by phone or visits." This affidavit fails to provide any concrete information on Mr. [REDACTED]'s contact with the applicant in the United States during the requisite period. Relevant information would include details on the type and frequency of contact they maintained. Moreover, there is no indication in this affidavit that [REDACTED] first met the applicant in the United States. Finally, [REDACTED] has not provided any relevant information on the applicant's residence in the United States during the requisite period, such as her address. It is reasonable to expect [REDACTED] to provide this information since he claims to have known the applicant since April 1981. Given these significant deficiencies, this affidavit does not have any probative value as evidence of the applicant's residence in the United States since April 1981.
- Copies of numerous receipts:
 - A receipt issued to the applicant from Home Interiors, dated September 25, 1983. This document is written in Spanish and does not contain an address for Home

- Interiors. Therefore, there is no information on this receipt to indicate that it was issued in the United States;
- A receipt issued to the applicant entitled "purchaser's receipt," dated October 29, 1982. There is no indication on this receipt of the entity that issued it. Therefore, there is no information on this receipt to indicate that it was issued in the United States. Moreover, the date on this receipt has been visibly altered from October 29, 1992 to October 29, 1982;
 - Two receipts issued to the applicant from Clinica Medica Familiar, dated July 13, 1981 and September 28, 1982. The receipt indicates that this medical clinic is located in Los Angeles, California. This document constitutes only limited evidence that the applicant resided in the United States in July 1981 and September 1982;
 - A receipt issued to the applicant from Sunshine Medical Clinic, Inc., dated November 8, 1981. The receipt indicates that this medical clinic is located in South Gate, California. This document constitutes only limited evidence that the applicant resided in the United States in November 1981;
 - A receipt issued to the applicant from Crazy Gideon's, dated December 15, 1984. The receipt indicates that this store is located in Los Angeles, California. This document constitutes only limited evidence that the applicant resided in the United States in December 1984; and
 - A receipt issued to the applicant from Nature's Sunshine Products, dated April 8, 1983. This document does not contain an address for Nature's Sunshine Products. Therefore, there is no information on the receipt to indicate that it was issued in the United States.
- Copies of 1985 federal and state tax returns; 1984 and 1985 Form W-2 wage and tax statements; and statements of earnings and deductions dated January 25, 1985, January 26, 1986, July 26, 1986 and August 10, 1986. These documents are issued under the name [REDACTED] and [REDACTED]. The applicant submitted copies of two social security cards, a card issued for [REDACTED] with the social security number [REDACTED] and a card issued for [REDACTED] with the social security number [REDACTED]. On appeal, the applicant submitted a Form SSA-7008, Request for Correction of Earnings Record, which states that she has used both of these names and social security numbers. However, there is no indication that she actually filed this document with the Social Security Administration. Additionally, the applicant's Form I-687 application does not show that she has ever used this name as her alias. The regulations at 8 C.F.R. § 245a.2(d)(2) provide that in cases where an applicant claims to have met any of the eligibility criteria under an assumed name, the applicant has the burden of proving that the applicant was in fact the person who used that name. The regulations further state that the most persuasive evidence is a document issued in the assumed name which identifies the applicant by photograph, fingerprint or detailed physical description. Other evidence which will be considered are affidavit(s) by a person or persons other than the applicant, made under oath, which identify the affiant by name and address, state the affiant's relationship to the applicant and the basis of the affiant's knowledge of the applicant's use of the assumed

name. 8 C.F.R. § 245a.2(d)(2)(ii). The applicant has failed to provide such documentation to prove that she is in fact [REDACTED]. It should also be noted that the tax returns contain the address [REDACTED]. The applicant's Form I-687 application provides that her address in 1985 was [REDACTED]. Given this inconsistency and the applicant's failure to establish her identity as [REDACTED] or [REDACTED], these documents do not have any value as credible and probative evidence of the applicant's continuous residence in the United States from 1984 until 1986.

- A copy of a letter from [REDACTED] Personnel Representative, B.P. John, dated June 11, 1982. This letter provides, "[t]he above individual has been employed by B.P. John as a general cleaner. His/Her employment with our company was during the period of April 19, 1982 to June 11, 1982." The regulations at 8 C.F.R. § 245a.2(d)(3)(i) provide that letters from employers should state the applicant's address at the time of employment, whether the information was taken from official company records, where records are located and whether CIS may have access to the records. The regulations further state that if records are unavailable, the employer should issue an affidavit form-letter stating that the applicant's employment records are unavailable and the reason such records are unavailable. The letter from B.P. John does not conform to these delineated guidelines. Therefore, this letter is of minimal probative value as evidence of the applicant's continuous residence in the United States from April 1982 until June 1982.
- A copy of a letter from [REDACTED], Vice President, Naco Enterprises, Inc. This letter provides, "[w]e at Naco Enterprises Inc. have had the pleasure of getting acquainted with [REDACTED], who was a tenant on Jan 1, 1981 through Dic. [sic] 31th 1989. at [REDACTED] Los Angeles Calif. 90001." This letter is dated February 25, 2005, over 20 years since the applicant purportedly first resided at this address. The letter fails to explain the source of information regarding the applicant's residence at this address. Mr. [REDACTED] does not indicate whether he has personal knowledge of this information. Nor does he indicate whether he obtained this information through a search of company records. Moreover, this letter is inconsistent with the applicant's Form I-687 application, which provides that she resided at [REDACTED] from January 1981 until July 1990. Therefore, this letter does not have any value as probative and credible evidence of the applicant's continuous residence in the United States from January 1, 1981 until December 31, 1989.

On January 10, 2006, the applicant appeared at the district office for her interview. The applicant was issued a Form I-72 requesting her to provide a statement from the Social Security Administration listing the years she has worked; a copy of her 2004 Form W-2; school records for the years 1981 to 1984; and other evidence of continuous residence in the United States such as Internal Revenue Service print-outs from 1981 to 1988. In response to this request, the applicant submitted two of her own affidavits, dated January 11, 2006. The affidavit entitled *School Records* provides, "I, [REDACTED] do not have any school records for the years 1981 to 1984 because I did not go to school for those years. My parents were in Mexico at the

time and they did not want for me [sic] attend school because they felt that I was too old to attend school.” The affidavit entitled Federal Income Tax 2004 provides, “I, [REDACTED] certify under penalty of perjury that I did not work for [sic] tax year 2004 because I gave birth to my fourth child at the time. My Common-Law spouse supported me and my children for the year 2004, because I did not work for the year 2004.” At issue in this proceeding is the applicant’s continuous residence in the United States from prior to January 1, 1982 until the date she 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. See CSS/Newman Settlement Agreements. Therefore, the applicant’s employment during 2004 is not relevant to this proceeding.

On July 21, 2006, the director issued a denial notice to the applicant. In denying the application, the director determined that the applicant failed to submit the requested documentation for the years 1981 to 1988. The director concluded that the applicant failed to establish by a preponderance of the evidence that she has resided in the United States for the requisite period.

On appeal, the applicant asserts that she has resided in the United States since 1981 and submitted sufficient evidence. The applicant states that she could not provide copies of her school records because she did not attend school. The applicant refers to receipts she submitted corroborating her presence from 1981 until 1988. The applicant states that she submitted letters pursuant to the request for additional evidence. The applicant asserts that the adjudicating officer failed to accept corrections to her application.

The applicant submits a brief where she states that she entered the United States in January 1981 and lived with her sister, [REDACTED] until August 1992. The applicant states that she arrived in the United States when she was fifteen years old and refused to attend school. The applicant claims that she helped her neighbor take care of his children for two years. The applicant claims that in 1984 and 1985 she worked for two companies under the alias Maria T. Solis. The applicant states that she requested a correction of her earnings record with the Social Security Administration. The applicant states that she was employed taking care of children and elderly women. The applicant states that later she was employed at a trimming at a company. Finally, the applicant states that she was not employed during the year 2004.

The applicant furnishes the following documentation as additional corroborating evidence of her residence in the United States:

- A declaration from [REDACTED] which provides that she has personally been acquainted with the applicant in the United States from January 1981 until present time. The declaration, in part, provides:

I am able to determine the beginning of our acquaintance because [REDACTED] was my neighbor. She lived at [REDACTED] Los Angeles, California. My residence was located across the

street from the apartment complex where [REDACTED] lived. [REDACTED]'s sister, [REDACTED], introduced us. [REDACTED] was only a teenager. I would see her almost everyday. I watched her grow up into a woman. We were neighbors for about eight years until 1989. My family and I moved to another residence. . . Due to [REDACTED]'s age, she could not find employment. But later when she was older she took care of some of the neighbors children when they needed a babysitter.

The declaration indicates that the applicant could not find employment during the requisite period. This statement is inconsistent with the applicant's Form I-687 application, which shows that the applicant was employed as a caregiver to [REDACTED] from April 1981 until June 1990. Additionally, the applicant submitted an amended Form I-687, which shows that she was employed during the requisite period in the positions of caregiver, machine operator and waitress. Given this inconsistency, this declaration cannot be given any probative value as credible evidence of the applicant's continuous residence in the United States during the requisite period.

- A declaration from the applicant's sister, [REDACTED], which provides that the applicant lived with her from January 1981 until August 1992. The declaration states that [REDACTED] and her children resided with the applicant at [REDACTED], Los Angeles, California. The declaration further states that [REDACTED] still resides at this apartment complex in apartment [REDACTED]. The statements from the applicant's sister, [REDACTED], draw into question the applicant's claimed identity as [REDACTED]. As stated above, the applicant submitted 1985 federal and state tax returns under the name [REDACTED] at the address [REDACTED], Los Angeles, California. The name [REDACTED] and the residential address of [REDACTED] are identical to the name and current address of the applicant's sister. Moreover, the 1985 tax returns at issue show two dependent children, [REDACTED]. The applicant's brief states that the name of her first child is [REDACTED]. [REDACTED]'s birth certificate shows her date of birth as January 9, 1992. Therefore, the applicant could not have claimed two dependent children on her tax returns in 1985. Given these inconsistencies, this declaration does not have any probative value as credible evidence of the applicant's continuous residence in the United States during the requisite period.
- Copies of receipts issued to the applicant from Home Interiors, dated February 12, 1982 and July 29, 1981. These documents are written in Spanish and do not contain an address for Home Interiors. There is no information on the receipts to indicate that they were issued in the United States. Therefore, these documents do not have any probative value as evidence of the applicant's residence in the United States in July 1981 and February 1982.
- Copies of receipts issued to the applicant from [REDACTED]. The first receipt is dated May 1, 1982. This document constitutes only limited evidence that the applicant resided in the United States in May 1982. The date on the second [REDACTED] receipt is illegible. Therefore

it cannot be afforded any probative value as evidence of the applicant's residence in the United States.

- A copy of a Social Security Administration Form SSA-7008 Request for Correction of Earning Record. The applicant listed her name and [REDACTED]'s name with their respective social security numbers on this form. However, the applicant has not submitted any evidence that she filed this form with the Social Security Administration.
- A copy of a notarized letter from [REDACTED] dated February 5, 2005. The letter provides, "I [REDACTED] residing at [REDACTED] CA 92844 give testimony that [REDACTED] is a good worker and responsible person and I know her since 1981." This letter contains no other information to corroborate Mr. [REDACTED]'s testimony. The letter contains no details on [REDACTED]'s first acquaintance with the applicant. The letter does not indicate that [REDACTED] first met the applicant in the United States. Additionally, the letter fails to provide any information on Mr. [REDACTED]'s contact with the applicant in the United States during the requisite period. Given these serious deficiencies, this letter is without any probative value as evidence of the applicant's continuous residence in the United States since 1981.

Finally, the applicant resubmits pages 1, 2, 5 and 6 of her Form I-687 application. The applicant indicates on her notice of appeal that these are the corrected pages of her application. The applicant's own assertions regarding her residence in the United States do not overcome the numerous inconsistencies in her evidence. To meet her burden of proof, an applicant must provide evidence of eligibility apart from her own testimony. 8 C.F.R. § 245a.2(d)(6). The applicant indicates on this amended application that she resided at [REDACTED] 6 Los Angeles, California from January 1981 until August 1992. However, the letter from [REDACTED] Vice President, Naco Enterprises, Inc. states that the applicant was their tenant at this address from January 1981 until December 1989. Additionally, the applicant indicates on this amended application that she was employed in California with Reliable Wiping Cloths, Inc. in May 1984 and [REDACTED]'s Café from January 1985 until December 1986. However, the W-2 Forms she submitted as evidence of this employment are respectively listed under the name [REDACTED] and [REDACTED].

As stated, evidence in the record contradicts the applicant's assertion that she has used these names as her alias.

The sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6). The applicant has failed to provide probative and credible evidence of her residence in the United States during the requisite period. The applicant submitted numerous documents, which as noted, are either inconsistent or lack considerable detail. As discussed above, these documents have either no probative value or minimal probative value as evidence of the applicant's continuous residence in the United States during the requisite period. Notably, the inconsistencies regarding the applicant's claimed identity as [REDACTED] undermine the overall credibility of her claim of [REDACTED].

continuous residence in the United States for the requisite period. The absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, as well as the inconsistencies and contradictions noted in the record, seriously detract from the credibility of her 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 inconsistencies in the record and the lack of credible supporting documentation, it is concluded that she has failed to establish by a preponderance of the evidence that she has continuously resided in an unlawful status in the United States for the 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.

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