

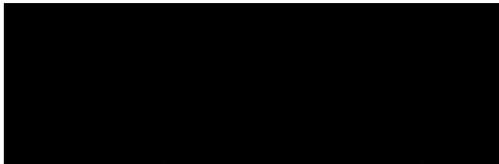
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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**



FILE:

MSC-05-221-10404

Office: DENVER

Date:

OCT 03 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 "Robert P. Wiemann".

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, Denver. 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. Specifically, the director stated that the applicant stated on her Form I-687 that she first entered the United States in 1982. However, the record also contained documents submitted by the applicant on which she stated that she first entered the United States in March 1988. Further, the applicant submitted evidence that she worked in Glendale, Arizona from 1982 to 1986 but claimed on her Form I-687 that she resided in Calexico, California at that time and evidence in the record was not consistent regarding her employment during the requisite period. The director stated that the applicant failed to satisfy her burden of proving that she was eligible to adjust to temporary resident status pursuant to the CSS/Newman Settlement Agreements. Therefore, he denied the application.

It is noted that the director raised the issue of class membership in the decision. Since the application was considered on the merits, the director is found not to have denied the applicant's claim of class membership.

On appeal, the applicant submits additional evidence for consideration in support of her application.

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) 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 applicant 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 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 a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on May 9, 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 indicated that during the requisite period she resided in Calexico, California from 1982 until 1987 and then in Santa Ana, California from 1987 until 1990. At part #32 where the applicant was asked to list all of her absences from the United States, she indicated that she was absent from September to November in 1986. As there are no dates associated with this absence, it is not clear whether this absence was more than or less than 45 days in length. At part #33, where the applicant was asked to list all of her employment in the

United States, the applicant did not indicate any employment during the requisite period. However, notes taken on the application at the time of the applicant's interview with a Citizenship and Immigration Services (CIS) officer indicate that she was first employed in the United States as a babysitter. There are no dates associated with this employment.

The record also contains a Form EOIR-42B Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents. At part #7 of this application, the application stated that she had resided in the United States since March 1, 1988. This form was submitted with a Form G-325A Biographic Information on which the applicant indicated she resided in Chihuahua Mexico from an unspecified date until March 1988. It is noted that the applicant did not indicate on her Form I-687 that she had an absence from the United States that ended in March of 1988.

That the applicant has previously indicated that she began residing in the United States in March 1988 casts doubt on her current claim that she resided in the United States for the duration of the requisite period.

Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. 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).

The applicant has the burden of proving by a preponderance of the evidence that she has resided in the United States for the requisite period. 8 C.F.R. § 245a.2(d)(5). 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 regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that an applicant may submit to establish proof of continuous residence in the United States during the requisite period. This list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts or letters. An applicant may also submit any other relevant document pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states, in pertinent part: that letters from employers should be on the employer letterhead stationary, if the employer has such stationary and must include the following: an applicant's address at the time of employment; the exact period of employment; periods of layoff; duties with the company; whether or not the information was taken from the official company records; and where records are located and whether the Service may have access to the records. The regulation further provides that if such records are unavailable, an

affidavit form-letter stating that the alien's employment records are unavailable and noting why such records are unavailable may be accepted in lieu of statements regarding whether the information was taken from the official company records and an explanation of where the records are located and whether USCIS may have access to those records. This affidavit form-letter shall be signed, attested to by the employer under penalty of perjury, and shall state the employer's willingness to come forward and give testimony if requested.

The record contains the following evidence that is relevant to the applicant's claim that she continuously resided in the United States during the requisite period:

- An affidavit from [REDACTED] that is dated September 7, 2001. The affiant states that he knows that the applicant has resided in the United States in Santa Ana since March 1988. He states that he has been in contact with the applicant since that time.
- An employment verification affidavit signed by [REDACTED] that is dated November 5, 2004. The affiant states that he was a general manager for Cooks Produce Inc., which the letterhead on which the affidavit is written indicates is located in Glendale, Arizona. The affiant goes on to state that the applicant worked with Cooks Produce harvesting lettuce and broccoli from January 1982 until April 1986. He states that the applicant was paid in cash and that there are no employment records to verify this. He states that the company closed in September 1987 and that the information regarding the applicant's employment is based on his personal knowledge. On her Form I-687, the applicant indicated that she resided in Calexico, California and was first employed as a babysitter, casting doubt on the affiant's assertion that she worked harvesting produce when she first entered the United States. It is noted that while the letterhead on this affidavit indicates that the company's headquarters were located in Glendale, Arizona, which is approximately 240 miles from Calexico, the letter does not clearly state where the company's produce was located or where the applicant's purported place of employment was. Because this affidavit indicates employment that is not consistent with what the applicant stated on her Form I-687 and because this affidavit is significantly lacking with regards to the criteria that the regulation at 8 C.F.R. § 245a.2(d)(3)(i) states employment verification affidavits must adhere to, this affidavit can be accorded only very minimal weight as evidence that the applicant resided in the United States for part of the requisite period.
- A second affidavit from [REDACTED] that was also notarized on November 5, 2004. The affiant states that he was the owner of Mag-da Packing Company, which the letterhead on the affidavit indicates was located in Calexico, California. The affiant states that he has offered a job to the applicant if she legalizes. He speaks of the applicant's good moral character and he provides his telephone number.

The applicant also submitted evidence of her residence in the United States subsequent to the requisite period. The issue in this proceeding is whether the applicant has submitted sufficient

evidence to prove that she continuously resided in the United States for the duration of the requisite period. Evidence that does not pertain to her residence during that time is not relevant to this proceeding and is, therefore, not discussed here.

The director denied the application for temporary residence on December 18, 2006. In denying the application, the director noted inconsistencies in the record regarding the applicant's employment. He noted that the affidavit from [REDACTED] was not submitted with documentation to support his claim of the applicant's employment as an agricultural worker. Though a second affidavit from [REDACTED] was submitted with a telephone number, the director stated that his employment affidavit was not submitted with a telephone number at which he could be contacted to verify the affidavit. The director further noted that there were documents in the record which indicate that the applicant first entered the United States in March 1988. The director concluded by stating that these inconsistencies caused the applicant to fail to satisfy her burden of proof and he denied the application.

On appeal, the applicant submits the following additional evidence for consideration:

- A declaration from the applicant, who states that she attempted to contact [REDACTED], but she has been unable to do so because he has moved to Salinas, California and has been diagnosed with Parkinson's Disease. She asserts that the letter she submitted from him contained his telephone number.
- A second declaration from [REDACTED] that is dated April 16, 2006. The declarant states that he has known the applicant since 1982. He states that he has been in close contact with the applicant. Though the declarant states that he has known the applicant since 1982, he does not state that he personally knows whether she was residing in the United States or elsewhere during the requisite period. Further, the declarant's September 2001 declaration stated that he knew that the applicant began to reside in the Santa Ana in March 1988 but did not state that she resided in the United States before that time. As this declaration does not contain testimony stating that the applicant ever resided in the United States, no weight can be accorded to this declaration as evidence that the applicant resided in the United States during the requisite period.
- A declaration from [REDACTED] that is dated April 16, 1986. The declarant states that she has known the applicant for 20 years, or since approximately 1986. However, the declarant does not state where she first met the applicant or whether she first met her in the United States. She does not state whether the applicant resided in the United States or elsewhere during the requisite period. Because this declarant does not state where the applicant resided during that period, her declaration carries no weight as evidence that the applicant resided in the United States during the requisite period.
- An affidavit from [REDACTED] that was notarized on April 16, 2006. The affiant states that the applicant has worked for her as a babysitter for the past eight years. This

indicates that the applicant has worked for the affiant since approximately 1998. Because this affidavit does not contain testimony regarding the applicant's residence in the United States during the requisite period, it is not relevant as evidence that she resided in the United States during that period.

In summary, the applicant has submitted no evidence of her residence in the United States prior to January 1, 1982. Though she has submitted an employment letter stating that she began working in the United States in January 1982, the letter states that she was an agricultural worker for a company located in Glendale, Arizona. Though this letter does not clearly state where the company was located or whether it was located in Glendale, Arizona or elsewhere, the applicant did not indicate that she had ever worked harvesting produce on her Form I-687. Further casting doubt on the applicant's claim that she resided in the United States for the duration of the requisite period is the applicant's testimony on her Form EOIR-42B and the Form G-325A that she submitted with that form, on which the applicant indicated that she entered and began residing in the United States in March 1988. The applicant did not indicate that she was absent from the United States in March of 1988. Therefore, at the very least, this indicates that the applicant has not represented all of her absences from the United States to Citizenship and Immigration Services, casting doubt on her claim that she maintained continuous residence in the United States during the requisite period.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence before January 1, 1982 and then 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.