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U.S. Citizenship  
and Immigration  
Services

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FILE:

MSC-06-101-24081

Office: LOS ANGELES

Date:

**OCT 10 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.

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 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. Specifically, the director stated that the evidence submitted by the applicant failed to satisfy her burden of proof. Therefore, the director determined the applicant was not eligible to adjust to temporary resident status pursuant to the CSS/Newman Settlement Agreements and denied the application.

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 January 9, 2006. 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 her addresses in the United States during the requisite period were all in California as follows: [REDACTED] in Canoga Park from December 1981 to October 1983; an unspecified address in Commerce, California from October 1983 to March 1984; [REDACTED] in Los Angeles from March 1984 to May 1985; 5006 [REDACTED] in Los Angeles from March 1985 until March 1988; and [REDACTED] in Los Angeles from March 1988 to March 1991. At part #32 where the applicant was asked to list all of her absences from the United States, she indicated that she was absent once during the requisite period when she traveled to Mexico because of an emergency from October to December in 1985. At part #33, where the applicant was asked to list all of her employment in the United States since she first entered, she did not indicate that she had ever been employed.

Also in the record are the notes from the CIS officer who interviewed the applicant. Here, the officer’s notes indicate that the applicant stated that she was employed as a babysitter for an infant approximately once a week. She stated that she resided with her aunt who did not send

her to school. It is noted that the applicant was born in December of 1966, and therefore she would have been either 14 or 15 years old in December 1981, when she claims to have first entered the United States.

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).

Prior to the date the director issued his NOID, the applicant failed to submit evidence that she resided in the United States for the requisite period apart from her own testimony.

The director of the National Benefits Center issued a Notice of Intent to Deny (NOID) to the applicant on March 29, 2006. In the NOID, the director stated that the applicant failed to submit evidence of the following: that she entered the United States before January 1, 1982 and then resided in a continuous unlawful status except for brief absences from before 1982 until the date she (or her parent or spouse) was turned away by Immigration and Naturalization Service (INS) when they tried to apply for legalization; that she was continuously physically present in the United States except for brief, casual and innocent departures from November 6, 1986 until the date that she (or her parent or spouse) tried to apply for legalization; and that she was admissible as an immigrant. The director granted the applicant 30 days within which to submit additional evidence in support of her application.

In response to the NOID, the applicant submitted the following evidence that is relevant to her residence in the United States during the requisite period:

- An affidavit from [REDACTED], who states that he has known and been friends with the applicant since December 1981. He further states that he was the manager of the building where she used to live. However, he does not state the address of this building. He further does not state where he first met the applicant or whether he met her in the United States. He does not indicate the frequency with which he saw the applicant during the requisite period or state whether there were periods of time during that period when he did not see the applicant.

- An affidavit from [REDACTED], who states that she met the applicant in March 1981. She states that the applicant is currently her neighbor in Van Nuys, California and that they visit each other often. She speaks of the applicant's moral character. However, though she states the month and year she met the applicant, the affiant does not state where she first met the applicant or whether she met her in the United States. This is significant because the affiant states she met the applicant in March 1981 and the applicant has not indicated an address of residence in the United States until December 1981. She further fails to indicate whether the applicant resided in the United States or elsewhere during the requisite period.

On November 27, 2006, the director of the Los Angeles District Office issued a request for additional information to the applicant. On this request, the applicant was instructed to provide the director with the following within 30 days:

- A letter of employment on letterhead that includes a job title, duties, hours worked per week, wages, length of employment and check stubs;
- An original childhood vaccination card;
- Proof of affiants' residence in the United States during the requisite period and a telephone number for each affiant each; and
- Additional evidence of the applicant's residence in the United States from before 1982 through 1988.

In response to the request for additional information, the applicant submitted the following evidence:

- A statement from the applicant, who states that she requested her vaccination records from Olive View Medical Center on December 19, 2006 but that this request will take 30 days to process. She states that she will send the records as soon as she receives them and states that she is enclosing her records from Mexico.
- The applicant's vaccination record from Mexico, which indicates that her date of birth is November 6, 1966, rather than the date indicated on her birth certificate, which is December 8, 1966. The record indicates that the applicant received vaccinations beginning on November 6, 1966 and then regularly until January of 1978. It is not clear why this record indicates the applicant was both born and vaccinated prior to the date of birth indicated on her birth certificate.
- An affidavit from [REDACTED], who submits a photocopy of her California Driver's License and states that she has known the applicant since 1982. She states that she has been friends with the applicant since that time and she speaks of the applicant's good moral character. However, the affiant does not state where she first met the applicant or whether she first met her in the United States. She does not indicate the frequency with which she saw the applicant during the requisite period or state whether

there were periods of time during that period when she did not see the applicant. She further does not state that she personally knows whether the applicant resided in the United States or elsewhere during the requisite period.

- An affidavit from [REDACTED], who submits her Resident Alien Card and states that she has known the applicant since 1982 when they lived next door to each other. She states that they have been friends since that time. However, the affiant does not state where she and the applicant resided when they first met or indicate whether this address was in the United States. She does not indicate the frequency with which she saw the applicant during the requisite period or state whether there were periods of time during that period when she did not see the applicant. She further does not state that she personally knows whether the applicant resided in the United States or elsewhere during the requisite period.
- An affidavit from [REDACTED] who submits a photocopy of his California Identification Card and states that he has known the applicant since 1982 and that they have been close friends since that time. He submits his telephone number and speaks of the applicant's moral character. However, the affiant fails to state where he first met the applicant or whether he first met her in the United States. He does not indicate the frequency with which he saw the applicant during the requisite period or state whether there were periods of time during that period when he did not see the applicant. He further does not state that he personally knows whether the applicant resided in the United States or elsewhere during the requisite period.
- An affidavit from [REDACTED], who states that she has known the applicant since 1982 and that they visit each other "every so often." However, the affiant does not state where she first met the applicant or whether she first met her in the United States. She does not indicate the frequency with which she saw the applicant during the requisite period or state whether there were periods of time during that period when she did not see the applicant. She further does not state that she personally knows whether the applicant resided in the United States or elsewhere during the requisite period.

It is noted that the applicant also submitted evidence of her residence in the United States subsequent to the requisite period, including affidavits from individuals who state that they did not meet the applicant until after the requisite period ended. However, the issue in this proceeding is whether she has submitted sufficient evidence to satisfy her burden of proving that she resided continuously in the United States for the duration of the requisite period. Therefore, documents that do not pertain to the requisite period are not relevant to this proceeding and are not discussed here.

The director of the Los Angeles District Office denied the application for temporary residence on February 6, 2007. In denying the application, the director stated that though the applicant submitted additional evidence in response to the request for evidence, it did not satisfy her

burden of proof, as she failed to submit proof of that the affiants from whom the applicant submitted evidence resided in the United States during the requisite period, as she requested in her request for evidence. The director also stated that the affidavits submitted were lacking in detail.

On appeal, the applicant submits a brief in which she asserts that she is submitting additional evidence in support of her application. She requests that her application be reconsidered. With this brief she submits the following additional evidence that is relevant to her residence in the United States during the requisite period:

- A photocopy of a boarding pass issued to the applicant by Mexicana Airlines. The date on this boarding pass is November 27, however the year is not indicated on the document. The number [REDACTED] is written at the bottom of the page of the photocopy.
- A photocopy of a letter that is in Spanish and appear to bear the date June 30, 1985. However, it is not clear who this letter was written to or where that person resided. The letter is also written in Spanish and was not submitted with a translation. Because it is not clear that this letter was sent to or by the applicant, it cannot be clearly associated with the applicant. Because the applicant failed to submit a certified translation of this letter, the AAO cannot determine whether it evidence supports her claim that she resided in the United States during the requisite period. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.
- An affidavit from [REDACTED], who states that she personally knows that the applicant resided in the United States in California from December 1981 until the present time. She states that the applicant first resided with the affiant's cousin, [REDACTED], and provides the applicant's cities of residence during the requisite period. She asserts that she has seen the applicant at family events since that time. However, the affiant does not state the frequency with which she saw the applicant during the requisite period or indicate whether there were periods of time when she did not see the applicant.
- An affidavit from [REDACTED] who submits his California Identification Card and states that he has known the applicant since 1982. However, he does not state where he first met the applicant or whether he first met her in the United States. He asserts that he was the applicant's neighbor on Kittridge Street in Van Nuys, California and that the applicant is currently his sister's neighbor. However, the applicant did not indicate that she resided on either Kittridge Street or in Van Nuys, California during the requisite period on her Form I-687. Because it is significantly lacking in detail, this affidavit can only be accorded

minimal weight as evidence of the applicant's residence in the United States during the requisite period.

- An affidavit from [REDACTED] who submits a photocopy of her Permanent Resident Card with his affidavit and states, that he has known the applicant since 1986. He speaks of the applicant's moral character. However, the affiant does not state whether he personally knows that the applicant resided continuously in the United States for part or all of the time that he has known her. Therefore, this affidavit can be accorded no weight as evidence of the applicant's residence in the United States during the requisite period.

The applicant also submitted photocopies of envelopes with her appeal. However, the quality of the photocopies is poor and the postmark dates are not legible on them. Therefore, the AAO cannot determine if these documents pertain to the requisite period.

In summary, though the applicant has submitted evidence in support of her application, she has continued to fail to provide evidence that the affiants from whom she submitted affidavits themselves resided in the United States during the requisite period. Though this is not a regulatory requirement, it is notable because the director requested this evidence of the applicant and she has failed to provide it. The applicant has also failed to provide her vaccination record from the United States as requested by the director. Though the applicant has submitted many affidavits from individuals who claim to have met her prior to or during the requisite period, only affiant [REDACTED] stated that she personally knew that the applicant resided in the United States during the requisite period. However, this affiant did not state the frequency with which she saw the applicant during the requisite period or whether there were periods of time when she did not see the applicant.

In this case, the absence of sufficient credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts 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 lack of sufficient 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.