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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: LOS ANGELES

Date: OCT 15 2008

MSC 05 312 12800

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 matter is now before the Administrative Appeals Office 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 (the 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 during the requisite period. On appeal, the applicant submitted additional 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 Immigration and Nationality Act (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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant’s own testimony. 8 C.F.R. § 245a.2(d)(6).

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 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.

On the Form I-687 application, which the applicant signed on July 29, 2005, the applicant was required to provide an exhaustive list of her residences in the United States since her first entry. As part of that residential history, the applicant stated that, from December 1981 to December 1987, she lived at [REDACTED] in Gonzalez, [sic]<sup>1</sup> California. The applicant was also required to provide an exhaustive list of all of her employment in the United States since January 1, 1982. As part of that employment history, the applicant stated that she worked from December 1981 to December 1987 as a self-employed seamstress at that same address.

The applicant was required, on that application, to provide an exhaustive list of her absences from the United States since January 1, 1982. The applicant stated that she returned to the Philippines from November 1986 to December 1986, and from December 1987 to December 1998. The applicant did not claim any other absences since her first entry into the United States.

The pertinent evidence in the record is described below.

- The record contains two almost identical form affidavits, dated December 13, 2005, from [REDACTED] and [REDACTED], both of Los Angeles, California. Ms. [REDACTED] stated that she has known the applicant for “many years,” but did not state when she and the applicant met or how often she saw the applicant during the period of requisite residence. [REDACTED] stated, “She had been my good and helpful neighbor and friend,” but, again, did not state when they met or how often she saw the applicant during the requisite period. Both affiants further stated, based on their asserted personal knowledge, that the applicant lived at [REDACTED] in Gonzalez [sic], California, from December 1981 to December 1987. The affiants did not specify the basis of their asserted personal knowledge, that is; they did not state when or whether they visited the applicant at her purported home address, whether the applicant told them contemporaneously that she lived at that address, or whether the applicant told them more recently that she had lived at that address.

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<sup>1</sup> This office notes that the town’s name is correctly spelled, “[REDACTED]”

- The record contains an affidavit, dated February 13, 2007, from [REDACTED] of Los Angeles, California. The affiant stated that she has known the applicant since 1968, and that the applicant came to the United States during December 1981, but did not state how often she saw her in the United States during the relevant period. The affiant further stated, “I guarantee [the applicant’s] continuous presence here in the United States of America from the period December 1981 to present except on some of her unexpected visit to the Philippines.” The affiant did not state the basis for her asserted knowledge of the applicant’s continuous presence.
- The record contains a rental application dated Monday, March 1987. The property that is the subject of that application is identified as “[REDACTED]” of [REDACTED] in Long Beach, California. That application lists the instant applicant as the person applying for a lease, but is unexecuted. The spaces for information pertinent to the applicant are otherwise mostly blank. This office notes that, on her Form I-687 application, the applicant never claimed to have lived at that address.
- The record contains a “Rental Agreement” dated “Monday,” March 1987.” It identifies the instant applicant as the tenant and [REDACTED] as the landlord, but is unexecuted, and the spaces provided for information about the lease are otherwise mostly blank.
- The record contains a “Notice to Pay Rent or Quit. That notice indicates that it refers to premises in Los Angeles County. That notice was not executed. The spaces to identify the defaulting tenant, the property, and the landlord are blank, as are the balance of the spaces on that form.
- The record contains a letter, dated January 13, 1989 from [REDACTED] whose address and telephone number were not provided. That letter is addressed “To All Tenants,” and announced a rent increase.
- The record contains a photograph of two women standing in front of a decorated area with the logo, “State of Georgia” on it. One of the women has an “X” drawn on her. The date that photograph was taken is not apparent.

The record contains no other evidence pertinent to the applicant’s residence in the United States during the salient period.

With the Form I-687 application, the applicant submitted no evidence in support of her claim of continuous residence in the United States during the requisite period.

In a Notice of Intent to Deny (NOID), dated November 17, 2005, the director stated that the applicant failed to submit evidence sufficient to demonstrate her entry into the United States prior to January 1, 1982, and continuous residence during the requisite period. The director granted the applicant 30 days to submit additional evidence.

In response the applicant submitted the affidavits of [REDACTED] and [REDACTED], both of which are described above.

On July 31, 2006, CIS issued a Form I-72 request for information. CIS requested, *inter alia*, evidence that the applicant was present in the United States from 1981 to 1988. The applicant was accorded 86 days to provide additional evidence. In response, the applicant provided the rental application, rental agreement, Notice to Pay Rent or Quit, and the January 13, 1989 letter of [REDACTED],<sup>2</sup> all of which are described above.

In the Notice of Decision, dated January 18, 2007, the director denied the application based on the reason stated in the NOID. On appeal, the applicant submitted the photograph described above. The applicant volunteered that the rental agreement did not contain [REDACTED] signature because the projected transaction never materialized.

Although she submitted various documents pertinent to an apartment that she ostensibly leased from [REDACTED] at [REDACTED] in Long Beach, California, the applicant is now apparently indicating that she never lived there. This evidence included a notice that rent was in arrears and a January 13, 1989 notice from [REDACTED] that he was raising his tenants' rent. The applicant now appears to be admitting that those documents have no relevance to her or this case. This raises the issue of why the applicant submitted the various items in support of her claim of continuous residence in the United States.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, the applicant must resolve any inconsistencies in the record with competent, independent, objective evidence. Attempts to explain or reconcile such inconsistencies, absent competent objective evidence sufficient to demonstrate where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate entry into the United States prior to January 1, 1982, and continuous residence during the requisite period.

The photograph provided shows two women. One or the other of those women may be the applicant, or perhaps not. Even if one of the women was positively identified as the applicant and the photograph indicated when and where it was taken, that would not demonstrate continuous residence during the requisite period, as the evidence in question is literally a snapshot. That photograph is very poor support for the proposition that the applicant continuously resided in the United States during the requisite period.

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<sup>2</sup> The applicant also submitted an owner's manual and warranty for a refrigerator and a religious pamphlet. This office perceives no relevance of those documents to the instant appeal and will not address them further.

The affidavits of [REDACTED] and [REDACTED] all state unequivocally that the affiants know the applicant was in the United States during the entire period or requisite residence. None of those affidavits, however, state the basis of the affiants' asserted knowledge. They are very poor support for the assertion that the applicant continuously resided in the United States during the requisite period, especially when the applicant's submission of irrelevant evidence, and representation of that evidence as relevant, is considered.

The evidence must be evaluated not by the quantity of evidence alone but by its quality. 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 its amenability to verification. Given the paucity of credible supporting documentation the applicant has failed to meet her burden of proof and failed to establish continuous residence in an unlawful status in the United States during the requisite period. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act. The application was correctly denied on this basis, which has not been overcome on appeal. The appeal will be dismissed.

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