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U.S. Citizenship  
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Services

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FILE:

MSC-06-004-12544

Office: LOS ANGELES

Date:

SEP 02 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:



**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 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 continuously resided in the United States in an unlawful status for the duration of the requisite period. Specifically, the director stated that evidence in the record was not sufficient to allow the applicant to satisfy her burden of proving that she resided in the United States for the duration of the requisite period. 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, counsel for the applicant argues that due weight was not accorded to the evidence the applicant submitted 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 October 4, 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 stated that her addresses in the United States during the requisite period were: [REDACTED] in Rialto, California from June 1981 until June 1987; and [REDACTED] from June 1987 until November 1997. At part #31 where the applicant was instructed to list all of her affiliations and associations with organizations, churches, unions, and businesses, the applicant did not indicate that she had any such affiliations or associations. At part #32 where the applicant was asked to list all of her absences from the United States, she indicated that she had one absence during the requisite period, when she traveled to Canada to visit family during the month of May in 1986. At part #33, where the applicant was asked to list all of her employment in the United States since she first entered, she stated that she has never been employed in the United States.

The record also contains a signed, sworn statement taken from the applicant on November 22, 2006 at the time of her interview with a CIS officer. In this statement, the applicant stated that she first entered the United States on June 13, 1981. The applicant indicated her addresses of residence consistently with what she stated on her Form I-687 and stated that she attempted to apply for legalization and was turned away on July 20, 1988. It is noted that the original application period for legalization ended on May 4, 1988. It is also noted that the CIS officer who interviewed the applicant pursuant to her Form I-687 application indicated that the applicant

was unable to recall streets near either of the two addresses where she stated she resided from 1981 to 1997.

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 of the National Benefits Center issued his NOID, the applicant did not submit evidence in support of her application.

The director of the National Benefits Center issued a Notice of Intent to Deny (NOID) to the applicant on November 17, 2005. In this 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:

- An affidavit from Volunteers of Africa that is not dated but is signed by Evangelist [REDACTED], who indicates that she is the executive director of the organization. The affiant states that she met the applicant on February 11, 1982 in Rialto, California at her friend's house. She further states that the applicant has volunteered for Volunteers of Africa. However, the affiant does not state when the applicant did so. The affiant states that the applicant's friends have taken turns hosting the applicant in their homes because the applicant has not been able to work. Though this affiant states that she met the applicant on February 11, 1982, she does not state how she is able to recall the exact date she met the applicant. She further does not state the frequency with which she saw the applicant during the requisite period or indicate whether there were periods of time during the requisite period when she did not see the applicant. Because this affiant does not state that she met the applicant before January 1, 1982, this affidavit carries no weight as evidence that the applicant entered the United States before that date. Because this

affidavit is lacking in detail, it can only be accorded minimal weight as evidence that the applicant resided in the United States during the requisite period.

- An affidavit from [REDACTED] that was notarized on December 13, 2005. The affiant states that the applicant is a family friend and that he has known her in Los Angeles since 1981. He states that the applicant introduced him to his wife in 1982. However, the affiant does not state where or when he first met the applicant. He fails to indicate the frequency with which he saw the applicant during the requisite period or to state whether there were periods of time during the requisite period when he did not see the applicant. Because this affidavit is significantly lacking in detail, it can only be accorded minimal weight as evidence that the applicant resided in the United States during the requisite period.

A photocopy of a Certificate of Baptism that states that the applicant was baptized on February 10, 1982 at the Ephesian Church of God in Christ. With this Certificate of Baptism, the applicant also submitted a "Statement of Giving" from the Ephesian Church of God in Christ that states that the applicant gave this church a total of \$787.00 during the year 1982. This statement is not signed and it does not indicate who has given this statement to the applicant. It is noted that the applicant did not indicate that she was ever a member of any churches in the United States on her Form I-687. It is also noted that the officer who interviewed the applicant pursuant to her Form I-687 indicated that during the applicant's interview with that officer, she was unable to recall streets near the church. Because these documents state that the applicant was affiliated with a church that she did not indicate she was affiliated with on her Form I-687, very minimal weight can be accorded to them as proof that the applicant resided in the United States in 1982. Because the Statement of Giving is not signed, no weight can be accorded to this document as proof that the applicant resided in the United States during the requisite period.

- Unsigned, undated declarations from [REDACTED] and [REDACTED]. It is noted that both declarants state that the applicant first began residing in the United States in April 1981. [REDACTED] states that he first met the applicant on May 20, 1981. However, the applicant testified in a sworn statement that she first entered the United States on June 13, 1981. Though [REDACTED] claims that she knows the applicant resided in the United States during the requisite period and states that she knows this because the applicant entered her salon in 1981 to have her hair done, she also states she has known the applicant since 1995. Because these declarations are not signed by the declarants, they can be accorded no weight as evidence that the applicant resided in the United States during the requisite period.
- A photocopy of a County of Los Angeles Department of Health Services Outpatient Reduced Cost Simplified Application Plan form that indicates that the applicant was a Los Angeles County resident on the date of her outpatient visit on May 2, 1983.

The record indicates that the Los Angeles District Director issued a Form I-72 Request for Evidence to the applicant. This Form I-72 instructed the applicant to submit a letter of

employment; phone numbers for affiants; proof that the affiants from whom she submitted affidavits had resided in the United States from before 1982 and then until 1986; and more proof of her residence in the United States from 1982 through 1988.

In response to this Form I-72, the applicant submitted the following additional evidence:

- A declaration from [REDACTED] that is dated November 16, 2006. The declarant submitted photocopies of his California Identification Card and the identity page of his United States Passport with his declaration. The declarant states that he has known the applicant since 1982 when they met at the Rialto Branch of the library. He states that he visited the applicant occasionally that they spoke over the telephone. He states that the applicant worked as a nanny during the requisite period. He goes on to state that the applicant resided on [REDACTED] from June 1987 until December 1987. This affiant states that he saw the applicant occasionally, however he does not indicate when he saw her, or state whether he saw her during the requisite period. He does not indicate whether there were periods of time during the requisite period of time when he did not see the applicant. Further, though the applicant has indicated that she has never been employed in the United States on her Form I-687, this declarant states that she was employed as a nanny.
- A declaration from [REDACTED] that is dated November 16, 2006. The declarant states that she has known the applicant since 1982 when she met her at her house because the applicant was a job applicant for a nanny position. She states that the applicant worked for her as a nanny in August 1982. She states that she dropped off the applicant after work and therefore she knows that the applicant resided on North Vista in Rialto, California from 1981 until 1987. It is noted that this declarant could not personally know that the applicant resided in the United States in 1981 if she met the applicant in August 1982. The declarant goes on to state that she knows the applicant resided on Milnar from June 1987 to December 1997 and then states that she believes that the applicant resided at this address for about six months.

It is noted that while both [REDACTED] and [REDACTED] have stated that the applicant was employed as a nanny during the requisite period, the applicant's Form I-687 and the affidavit from Evangelist [REDACTED] both state that the applicant was never employed in the United States. These inconsistencies cast doubt on assertions made by these individuals regarding the applicant's employment.

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 director denied the application for temporary residence on December 19, 2006. In denying the application, the director noted the evidence submitted by the applicant in response to the

From I-72 but stated that these declarations, when considered with other evidence in the record, were not sufficient to satisfy the applicant's burden of proof.

On appeal, the applicant submits a brief through counsel. Counsel argues that the director did not accord sufficient weight to the evidence submitted by the applicant.

The AAO has reviewed the evidence submitted by the applicant in support of her claim of having maintained continuous residence in the United States for the duration of the requisite period and has found that she has not satisfied her burden of proof. Affiants Evangelist [REDACTED] and [REDACTED] did not provide specific details regarding the applicant's residence in the United States. Though the applicant did not indicate that she was ever affiliated with any churches in the United States on her Form I-687, she has submitted two documents from a church asserting that the applicant was associated with that church. The applicant submitted unsigned declarations from [REDACTED] and [REDACTED] that contain testimony that is not consistent with other evidence in the record. Declarants [REDACTED] and [REDACTED] both state that the applicant was employed as a nanny. However, both the applicant's Form I-687 and the declaration from Evangelist [REDACTED] state that the applicant was never employed in the United States during the requisite period. Further, declarants [REDACTED] and [REDACTED] do not provide details regarding the frequency with which they saw the applicant during the requisite period or indicate whether there were periods of time when they did not see her during that time.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence during the 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.