

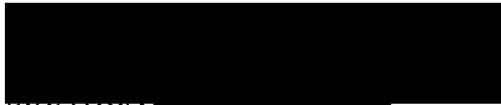
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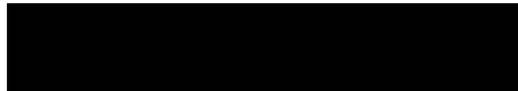
MSC 05 223 10148

OFFICE: LOS ANGELES

Date: **SEP 23 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 District Director, Los Angeles, and 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 (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 was employed in the United States during the statutory period and provides a brief discussing her employment in the United States during the statutory period and the documents she has submitted to establish that she has resided in the United States as claimed.

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 until the date of filing the application. 8 C.F.R. § 245a.2(b)(1).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the alien 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.* 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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that she resided in the United States during the requisite time period. Here, the applicant has not met this burden.

The record shows that a Form I-72 was issued on March 6, 2006, instructing the applicant to provide evidence of her U.S. residence during the relevant time period. In response, the applicant provided the following documentation:

1. An affidavit dated March 20, 2006 from [REDACTED] who stated that she is the applicant's sister and claimed that the applicant resided with her at [REDACTED] California from July 1986 until December 1988. It is noted that [REDACTED] did not provide any information about the events and/or circumstances of the applicant's alleged residence in the United States during the statutory time period. As such, this document will only be afforded minimal evidentiary weight.
2. An undated affidavit from [REDACTED] who claimed that she has known the applicant since 1980 when the two met through a mutual friend. [REDACTED] stated that the applicant resided with her aunt in Maywood, California from 1980-1981 and further claimed that the applicant babysat the affiant's child from October 1981 until April 1985. The affiant claimed that she sees the applicant at social gatherings and family events. It is noted, however, that the applicant's Form I-687 does not include a residential address prior to May 1985. Although the applicant claims on appeal that she first entered the United States "sometime on [sic] 1981," she does not claim that she first came to the United States in 1980. Therefore, this affiant's statement is inconsistent with the applicant's claims to date. 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).

3. An employment letter dated April 20, 2005 from [REDACTED] who claimed that the applicant was employed by his farm labor contracting company from May 1, 1985 to May 1, 1986 for a total of 105 days. [REDACTED] claimed that he was unable to provide payroll documents because they were destroyed due to the fact that they were outdated. He further claimed that he was able to recognize the applicant as a result of his yearly contact with her. The affiant's statements, however, are not persuasive, as he failed to explain how he was able to provide precise dates of employment and the number of man-days worked without being able to refer to any payroll documents. The affiant also failed to provide the applicant's residential address during her alleged employment as required by 8 C.F.R. § 245a.2(d)(3)(i) and did not explain the nature of his "yearly personal contacts" with the applicant.
4. Two affidavits dated April 25, 2005 from [REDACTED] respectively. Both women stated that they had known the applicant since June 1985. **However, while [REDACTED] claimed that the applicant resided in Maywood, California from 1985 to the present, [REDACTED] claimed that the applicant resided in Southgate, CA during the same time period.** Neither individual provided a more precise address for the applicant during the relevant time period. It is further noted that neither claim is entirely consistent with the information provided by the applicant in No. 30 of the Form I-687. More specifically, the applicant indicated that she resided in Mendota, California from May 1985 to May 1986 and in Santa Ana, CA from July 1986 to July 1993. While the applicant did claim that she resided in Maywood, California and in Southgate, California, she claimed that her Maywood residence took place from June 1995 until January 1999 and that her Southgate residence commenced in January 1999 and continues to present day. As previously stated, the applicant must reconcile these inconsistencies with documentary evidence. *See Matter of Ho*, 19 I&N Dec. at 591-92. Aside from the obvious discrepancies in each of the affidavits, neither affiant provided any information about the events and/or circumstances of the applicant's alleged U.S. residence during the time period they each claimed to have known her. Due to these various deficiencies, neither affidavit will be afforded evidentiary weight in this proceeding.
5. An affidavit dated April 28, 2005 from [REDACTED] who claimed that she has been acquainted with the applicant since July 1986 and further stated that the applicant worked for her as a babysitter from July 1986 through December 1995. It is noted that this affiant failed to provide the applicant's residential address during the time of the alleged **employment as required by 8 C.F.R. § 245a.2(d)(3)(i).** **The affiant also provided no information about the events and/or circumstances of the applicant's alleged U.S. residence during the relevant time period.** In light of these deficiencies, this affidavit will only be afforded minimal evidentiary weight.

On November 4, 2006, the director issued a decision denying the application based on the finding that the applicant failed to submit sufficient evidence to support her claim.

On appeal, the applicant submits a brief stating that she has resided in the United States continuously during the statutory period with the exception of two absences, which the applicant states took place in August 1985 and December 1987. The AAO notes, however, that this information is not consistent with the information the applicant provided at No. 32 of her Form I-687, where she identified a single absence in December 1987. The AAO also notes that the applicant indicated in No. 16 of her Form I-687 that May 1985 was the date of her last entry into the United States. This information is inconsistent with her claim that she departed and returned to the United States in December 1987. Lastly, despite the fact that the applicant claims on appeal that she has resided in the United States since 1981, her Form I-687 does not include any residence information that predates May 1985, the month and year she provided in No. 16 of the application.

The applicant then proceeds to restate her employment history, listing employers whose letters had been previously submitted in support of the applicant's Form I-687. The applicant also resubmits the affidavits of [REDACTED]. However, the AAO discussed both documents above and found each one to be lacking key elements that would lend credibility to either affiant's statements.

The absence of sufficiently detailed and credible supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of this claim. As previously stated, 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). Given the applicant's contradictory statements on her application and her reliance upon documents with minimal probative value, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the date she attempted to file a Form I-687 application as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E-M-*, 20 I&N Dec. 77. 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.