



U.S. Citizenship  
and Immigration  
Services



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FILE: [REDACTED]  
MSC 06 045 13744

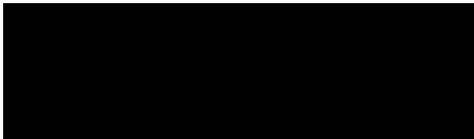
Office: DALLAS

Date: **DEC 08 2009**

IN RE: Applicant: [REDACTED]

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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

 Perry Rhew  
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, Dallas, Texas, and 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 he 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, counsel asserts that the director misapplied and violated the regulations in finding that the evidence submitted did not meet the standard of proof because the affidavits were not successfully verified. Counsel asserts that it is unreasonable to deny the application after only a single attempt at verifying the authenticity of the sworn affidavits. Counsel submitted additional affidavits in support of the appeal.

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 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, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. Paragraph 11, page 6 of the CSS Settlement Agreement and paragraph 11, page 10 of the Newman Settlement Agreement.

An alien applying for adjustment of status has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, 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. *See* 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 including affidavits 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 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 or petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (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 the time the applicant filed her Form I-687 application, she provided no documentation to establish continuous residence and physical presence in the United States during the requisite period. In response to a Notice of Intent to Deny dated December 6, 2005, the applicant submitted affidavits from [REDACTED] and [REDACTED] who indicated that they have known the applicant since 1982 and 1987 respectively, and that the applicant has maintained residence in the Dallas-Fort Worth area since that time.

At the time of her interview on November 21, 2006, the applicant provided an affidavit from [REDACTED] who indicated that he has been acquainted with the applicant since December 1981. The affiant indicated that the applicant resided in his home, [REDACTED] until February 1987.

On June 21, 2007, the director issued a Notice of Intent to Deny, which advised the applicant that in an attempt to verify the authenticity of [REDACTED] affidavit, the interviewing officer called the telephone number provided on the affidavit; however, no one answered. The applicant was advised that the documentation submitted was insufficient to establish continuous residence in the United States since before January 1, 1982 through the date she attempted to file her application.

The applicant was provided 30 days in which to rebut the director's findings. The applicant, however, failed to respond to the notice. Accordingly, on October 3, 2007, the director denied the application.

On appeal, counsel submits affidavits from [REDACTED] and [REDACTED] who indicated that they can be contacted at the telephone number listed on their initial affidavit. Counsel also submits affidavits from [REDACTED] and [REDACTED]. [REDACTED] indicates that he met the applicant at an Easter celebration in Irving, Texas in April 1982, were neighbors for five or six years in Irving, and that the applicant was residing with [REDACTED] at that time. [REDACTED] indicates that he met the applicant at the home of [REDACTED] in December 1981. The affiant indicated that he worked with [REDACTED] and went to his home everyday to pick up materials and work assignments.

The U.S. Citizenship and Immigration Services (USCIS) has determined that affidavits from third party individuals may be considered as evidence of continuous residence. *See Matter of E-- M--*, *supra*. In ascertaining the evidentiary weight of such affidavits, USCIS must determine the basis for the affiant's knowledge of the information to which he or she is attesting; and whether the statement is plausible, credible, and consistent both internally and with the other evidence of record. *Id.*

Following the dicta set forth in *Matter of E-- M--*, *supra*, the affidavits should be analyzed to determine if the affidavits upon which the claim relies are consistent both internally and with the other evidence of record, plausible, credible, and if the affiant sets forth the basis of his knowledge for the testimony provided. The statements issued by counsel have been considered. However, the evidence of record submitted does not establish with reasonable probability that the applicant resided in a continuous unlawful status during the requisite period.

At the time the applicant filed her Form I-687 application on November 14, 2005, she claimed to have resided at the following residences in Dallas, Texas during the requisite period:

- April 1981 to April 1983 – [REDACTED]
- May 1983 to June 1986 – [REDACTED]
- July 1986 to September 1989 – [REDACTED]

The applicant also claimed the following employment in Dallas during the requisite period:

- April 1981 to May 1982 – unemployed [REDACTED]
- June 1982 to December 1987 – babysitter for [REDACTED]
- January 1988 to December 1991 – babysitter for [REDACTED]

Counsel subsequently provided an amended Form I-687 application because according to the interviewing officer, the “first preparer entered many errors in I-687.”

The Form I-687 application filed on November 14, 2005, does not reflect that anyone other than the applicant completed the application, as no information is listed in item 43 of the application; item 43 of the application requests the name, address and signature of the person preparing the form. As the applicant did not claim residence at [REDACTED] on her Form I-687 application, the affidavits from [REDACTED] and [REDACTED] raise serious questions to their credibility.

The amended application did not list any employment during the requisite period and only listed the applicant's residence in Irving, Texas from December 1981 to February 1987.

On each application, the applicant claimed that her initial application was rejected in *April 1988* due to her departing the United States in 1987. The applicant, however, has not provided any credible evidence to establish her place of residence in the United States from March 1987 to April 1988.

It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I. & N. Dec. 582, 591-92 (BIA 1988).

The affiants' statements do not provide detailed accounts of an ongoing association establishing a relationship under which the affiants could be reasonably expected to have personal knowledge of the applicant's residence, activities and whereabouts during the period in question. To be considered probative, an affiant's affidavit must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. The affidavit must contain sufficient detail, generated by the asserted contact with the applicant, to establish that a relationship does in fact exist, how the relationship was established and sustained, and that the affiant does, by virtue of that relationship, have knowledge of the facts asserted. The affidavits from the affiants do not provide sufficient detail to establish that they had an ongoing relationship with the applicant that would permit them to know of the applicant's whereabouts and activities throughout the requisite period.

The absence of sufficiently detailed 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 applicant's reliance upon documents with minimal probative value, it is concluded that the evidence submitted fails to establish continuous residence in an unlawful status in the United States during the requisite period.

Therefore, based upon the foregoing, the applicant 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.