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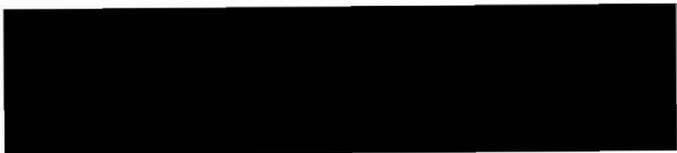


FILE: [REDACTED]  
MSC-05-172-11461

Office: LOS ANGELES

Date: **JAN 13 2009**

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.

John F. Grissom, Acting 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. The director noted that although the applicant testified under oath during her immigration interview that she had entered the United States on September 5, 1981, she had only listed on her Form I-687 application residence and employment starting in 1985. The director further noted that although the applicant submitted affidavits in which the affiants stated under oath that they had known her to be in the United States since 1981, she indicated on her Form I-589, Application for Asylum and Withholding of Deportation, and testified under oath before an Immigration Judge that she had entered the United States on August 2, 1987. 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 her claim of eligibility for temporary resident status. She states that she has submitted affidavits that demonstrate her employment in the United States from September of 1981 through May of 1986; and May of 1985 through May of 1986. She does not submit any new evidence on 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).

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. See 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 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.

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 Supplement to United States Citizenship and Immigration Services (USCIS) on March 21, 2005.

The applicant submitted the following affidavits:

- An affidavit from [REDACTED] in which he stated that he has known the applicant since 1981 and that she was his family's housekeeper and babysitter from September of 1981 to April of 1985.

- An affidavit from [REDACTED], president of [REDACTED] in which he stated that his company employed the applicant as a farm laborer from May 1, 1985 to May 1, 1986, and that the company's payroll records have been destroyed.
- An affidavit from [REDACTED] in which she stated that she has known the applicant since November of 1981 and that they met at a family gathering.
- An affidavit from [REDACTED] in which she stated that she has known the applicant since 1981 when the applicant came to California to live.
- An affidavit from [REDACTED] in which she stated that she has known the applicant since 1981.
- An affidavit from [REDACTED] in which he stated that he has known the applicant since 1981 and that the applicant is his wife's cousin.

The affiants' statements are inconsistent with what the applicant indicated on her Form I-589, Application for Asylum and Withholding of Deportation, and with her testimony she gave under oath before an Immigration Judge on July 13, 2000, in which she declared that she had entered the United States on August 2, 1987. There has been no explanation given for the discrepancies. 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 [REDACTED] application. It is incumbent upon the 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 lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

In addition, the affiants fail to specify the applicant's place of residence during the requisite period. They also fail to provide any detail relating to the circumstances of the applicant's claimed entry into or residence in the United States during the requisite period. The affiants fail to specify the frequency with which they saw and communicated with the applicant sufficient to demonstrate their knowledge of her whereabouts throughout the requisite period. The employment affidavits from [REDACTED] and [REDACTED] do not conform to regulatory standards for attestations by employers. Specifically, the affidavits fail to specify the address(es) where the applicant resided during the claimed employment periods. 8 C.F.R. § 245a.2(d)(3)(i). Given these discrepancies, the affidavits can be accorded little weight in establishing that the applicant resided in the United States for the duration of the requisite period.

In denying the application the director noted that the applicant's claimed residence in the United States since September of 1981 is inconsistent with her testimony given under oath before the Immigration Judge in her asylum case where she stated that she entered the United States on August 2, 1987.

On appeal, the applicant reasserts her claim of eligibility for temporary resident status. The applicant does not submit any additional evidence.

In the instant case, the applicant has failed to provide sufficient credible and probative evidence to establish her continuous unlawful residence in the United States since prior to January 1, 1982, and throughout the requisite period. She has failed to overcome the director's basis for denial. The attestations submitted are inconsistent with statements made by the applicant and are lacking in detail.

It is noted that although the applicant claims to have resided in the United States since she was 9 years old, she has provided neither school records nor immunization or medical records to substantiate such claim. She has also failed to provide any independent documentary evidence from or about any responsible adult or guardian sufficient to indicate the circumstances under which she lived in the United States during her childhood and throughout the requisite period.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period and the inconsistencies noted above seriously detract from the credibility of this 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 contradiction in the applicant's statements and her reliance upon evidence that is lacking in detail, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States for the requisite period 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.