

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529 - 2090

PUBLIC COPY 

U.S. Citizenship
and Immigration
Services

L1



FILE: 
MSC-06-098-25969

Office: LOS ANGELES

Date: JUN 15 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:



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, or *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 of the Los Angeles office, 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 (LULAC) Class Membership Worksheet. The director denied the application, finding 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 time period.

On appeal, the applicant asserts that she has established her unlawful residence for the requisite time period. The AAO has considered the applicant's assertions, reviewed all of the evidence, and has made a *de novo* decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.¹

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. 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 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. 8 C.F.R. § 245a.2(d)(5).

¹ The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has long been recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n.9 (2d Cir. 1989).

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, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 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. *See* 8 C.F.R. § 245a.2(d)(6). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

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. 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. *Matter of Ho*, 19 I & N Dec. 582, 591-592 (BIA).

The issue in this proceeding is whether the applicant (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. The documentation that the applicant submits in support of her claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of several affidavits and letters, the applicant's marriage certificate, the birth certificate, baptism certificate, and immunization record of the applicant's first child, and copies of several photographs postmarked envelopes. The AAO has reviewed each document in its entirety to determine the applicant's eligibility; however, the AAO will not quote each witness statement in this decision. Some of the evidence submitted indicates that the applicant resided in the United States after May 4, 1988; however, because evidence of residence after May 4, 1988 is not probative of residence during the requisite time period, it shall not be discussed.

The record contains an affidavit and a letter from [REDACTED] who states that she knows that the applicant arrived in the United States before 1982 because she lived with the applicant in an apartment located at [REDACTED] in Los Angeles from June 1980 until December 1987. However, the testimony of the affiant is inconsistent with that of the applicant. On the I-687 application the applicant states that she resided at this address from 1980 for the duration of the requisite statutory period.²

The applicant submitted an almost identical affidavit and an almost identical letter from [REDACTED] the applicant's brother-in-law, who states that he knows that the applicant arrived in the United States before 1982 because he also lived with the applicant in an apartment located at [REDACTED] in Los Angeles from June 1980 until December 1987. [REDACTED] also states that he was a witness at the applicant's wedding.³ As stated above, the testimony of the affiant is inconsistent with that of the applicant. On the I-687 application the applicant states that she resided at this address from 1980 for the duration of the requisite statutory period.

The record contains an almost identical affidavit and letter from [REDACTED] the applicant's cousin. The record also contains a second, undated letter from this affiant, who states that she knows that the applicant resided at [REDACTED] in Los Angeles from June 1980 until February 20, 1989. The affiant states that she knows this information because the applicant was her babysitter. However, the testimony of the affiant is inconsistent with that of the applicant. On the I-687 application the applicant does not list this address as a residence address in the United States during the requisite period.

The applicant submitted an almost identical affidavit and letter from [REDACTED], a friend of the applicant's husband, who states that he knows that the applicant resided at [REDACTED] in Los Angeles from February 1979 until December 1990. The affiant states that he knows this information because he worked with the applicant's husband and met the applicant when he would play baseball with her husband. However, the testimony of the affiant is inconsistent with that of the applicant. On the I-687 application and at the time of the interview the applicant stated that her first entry into the United States was in 1980. In addition, the applicant does not list this address on the I-687 application as a residence address in the United States during the requisite period.⁴

The record contains an almost identical affidavit and letter from [REDACTED], the applicant's cousin.⁵ The affiant states that he knows that the applicant resided at [REDACTED] in Los Angeles from February 1979 until December 1990. The affiant states that he knows this information because he lived with the applicant for two years, although he does not specify for which two years he resided with the applicant. In addition, the testimony of the affiant is inconsistent with that of the applicant. On the I-687 application and at the time of the interview the applicant stated that her first entry into the United States was in 1980.

² The applicant states that she resided at [REDACTED] in Los Angeles from 1980 until 1990.

³ The record reflects that the applicant was married in Los Angeles on July 17, 1981.

⁴ The affiant also states in his letter that he was residing at [REDACTED] in Los Angeles from January 1982 through May 1988.

⁵ Regarding the almost identical affidavits and letters of all of the affiants, the AAO notes that the affidavits were all executed on March 11, 2006 before the same notary, and the letters were all dated March 13, 2006.

Although the witnesses claim to have personal knowledge of the applicant's residence in the United States during the requisite period, none of the witness statements provides concrete information, specific to the applicant and generated by the asserted associations with her, which would reflect and corroborate the extent of those associations, and demonstrate that they were a sufficient basis for reliable knowledge about the applicant's residence in the United States during the requisite period. For instance, the witnesses do not state how they date their initial meeting with the applicant, how frequently they had contact with the applicant, and how they had personal knowledge of the applicant's presence in the United States during the requisite period. Upon review, the AAO finds that, individually and together, the witness statements do not indicate that their assertions are probably true. In addition, the many discrepancies among the witnesses' statements detract from the credibility of the applicant's claim. 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. *Matter of Ho*, 19 I & N Dec. 582, 591-592 (BIA). Therefore, they have minimal probative value.

Additional evidence in the record is comprised of the applicant's marriage certificate, the birth certificate, baptism certificate and immunization record of the applicant's first child, and copies of several photographs and postmarked envelopes. The applicant has submitted copies of her marriage certificate which reveals that she was married in Los Angeles on July 17, 1981. The applicant has also submitted the birth certificate and baptismal certificate for her first child who was born and baptized in Los Angeles on April 25, 1982 and December 11, 1982, respectively. Although the marriage certificate, birth certificate and baptismal certificate are evidence of the applicant's presence in the United States on July 17, 1981, April 25, 1982 and December 11, 1982, they do not establish the applicant's continuous residence for the duration of the requisite statutory period. In addition, on the marriage certificate the applicant lists her residence address as [REDACTED] in Los Angeles. This information is inconsistent with the information contained in the I-687 application which does not list this address as a residence address in the United States during the requisite period. This contradiction undermines the credibility of the applicant's claim of entry into the United States prior to January 1, 1982 and continuous residence in the United States during the requisite period.

The applicant submitted copies of the immunization record of her first child, [REDACTED] from Clinica Medica Cuzcallan in Los Angeles. The immunization record reveals that the clinic administered immunizations to applicant's child on April 16, 1986 with results read April 18, 1986, and on April 23, 1987.⁶ Although the immunization records are evidence of the applicant's presence in the United States on those dates, they do not establish the applicant's continuous residence for the duration of the requisite statutory period.

The record contains copies of ten photographs, two of which are dated July 1978 and May 1981, respectively. The persons in the photographs have not been identified by name. Copies of photographs do not establish the applicant's continuous residence throughout the requisite period.

⁶ The immunization records also reveal notations that the dates of previous immunizations from June 26, 1982 through April 2, 1987 were copied from another source. However, there is no statement that these immunizations were administered in the United States.

The record also contains copies of ten postmarked envelopes sent by the applicant's husband to the applicant with postmarks in 1985 and 1986. Nine of the envelopes were sent to the applicant at the address of [REDACTED] in Los Angeles. One of the envelopes was sent to the applicant at the address of [REDACTED] in Huntington Park. Although these envelopes are evidence of the applicant's residence in the United States in 1985 and 1986, they do not establish the applicant's continuous residence for the duration of the requisite statutory period. In addition, these envelopes are inconsistent with the information contained in the I-687 application which does not list either of these addresses as a residence address in the United States during the requisite period. This contradiction undermines the credibility of the applicant's claim of entry into the United States prior to January 1, 1982 and continuous residence in the United States during the requisite period.

The remaining evidence in the record is comprised of copies of the applicant's statements and the I-687 application. As stated previously, to meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony, and the sufficiency of all the evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6). Here, the applicant has failed to provide probative and credible evidence of her continuous residence in the United States for the duration of the requisite period. The applicant's evidence lacks sufficient detail, and there are material inconsistencies in the record.

Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that she is eligible for the benefit sought. The various statements and affidavits currently in the record which attempt to substantiate the applicant's residence in the United States during the statutory period are not objective, independent evidence such that they might overcome the inconsistencies in the record regarding the applicant's claim that she maintained continuous residence in the United States throughout the statutory period, and thus are not probative.

Beyond the decision of the director, the record also reveals that at the time of the interview on the I-687 application the applicant told the interviewing officer that she was deported from the United States in 1980.⁷ Although this ground of inadmissibility is waivable, even if the applicant were to be granted a waiver she remains ineligible for failure to establish her continuous unlawful residence.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that she entered the United States before January 1, 1982 and 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.

⁷ However, at the time of submitting the Form I-690 application for waiver the applicant stated that she did not remember having been deported in 1980.