

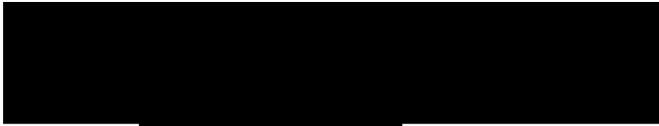
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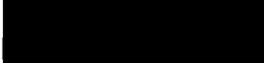


U.S. Citizenship  
and Immigration  
Services



L1

FILE:



Office: LOS ANGELES

Date:

**MAR 25 2009**

MSC 06 097 28668

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.

A handwritten signature in black ink, appearing to read "John F. Grissom".

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 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, and a Form I-687 Supplement, CSS/Newman (LULAC) Class Membership Worksheet. The director denied the application because the applicant did not establish that she continuously resided in the United States for the duration of the requisite period.

On appeal, the applicant submits additional documents to establish her continuous residence in the United States.

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). 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 the evidence for relevance, probative value, and credibility, within the context of the totality of the evidence, to determine whether the facts to be proven are 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.

The pertinent evidence in the record is described below.

1. A notarized statement from [REDACTED] dated July 15, 1990, who states that the applicant and her husband [REDACTED] lived with her at [REDACTED] Houston, Texas, from January 1982 to December 1983.
2. A notarized statement from [REDACTED] dated May 17, 2007, who states that the applicant lived with her at [REDACTED] "in 1982 thru 1983."
3. A notarized statement from [REDACTED] residing at [REDACTED] [REDACTED] California, who certifies that the applicant lived in his house from 1983 to 1987.
4. A declaration from [REDACTED] the applicant's uncle, who states that the applicant has lived in the United States since 1981.
5. A notarized statement from [REDACTED] who states that he has known the applicant since 1983.
6. A notarized statement from [REDACTED] who states that he has known the applicant since 1983.

7. A notarized statement from [REDACTED] who states that she has known the applicant since 1983.
8. A notarized statement from [REDACTED] who states that he has known the applicant since 1983.
9. A U.S. Postal Service Form 3806, Receipt for Registered Mail, indicating the applicant had sent registered mail to a person in Mexico on November 9, 1987.
10. The applicant's pay stubs for three bi-weekly pay periods in 1987 and 1988.
11. The applicant's State of California identification card issued on March 22, 1988.

On her Form I-687, the applicant stated she resided at [REDACTED] in Houston, Texas from January 1982 to December 1983. However, this statement contradicts the two contradictory notarized statements from [REDACTED] (Items # 1 and # 2 above), in which she states that the applicant and her husband [REDACTED] lived with her at [REDACTED], Houston, Texas, from January 1982 to December 1983, and that the applicant lived with her at [REDACTED] in Houston, Texas, in 1982 thru 1983. All three of these statements are at variance with the notarized Statement from [REDACTED] residing at [REDACTED] California, who certifies that the applicant lived in his house from 1983 to 1987.

Given the conflicting information concerning the applicant's claim of residence, the declaration and notarized statements (Items # 4 thru # 8), are of minimal probative value in establishing that the applicant resided in this country during the requisite period. Based upon the U.S. Postal Service Form 3806, the applicant's pay stubs and her State of California identification card (Items # 8 thru 11), the AAO accepts that the applicant was present in the United States for a part of the requisite period.

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. Further, the applicant must resolve any inconsistencies in the record with competent, independent, objective evidence. Attempts to explain or reconcile such inconsistencies, absent competent objective evidence sufficient to demonstrate where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). These inconsistencies cast doubt not only on the evidence containing the conflicts, but on all of the applicant's evidence and all of her assertions.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate entry into the United States prior to January 1, 1982, and continuous residence during the requisite period. The applicant asserted residential history on her I-687, is accompanied by inconsistent evidence.

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*. Therefore, the applicant is ineligible for temporary resident status under section 245A of the Act.

**ORDER:** The appeal is dismissed. This decision constitutes a final notice of ineligibility.