

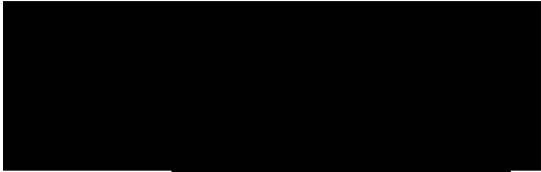
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals  
Washington, DC 20529-2090



U.S. Citizenship  
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FILE: [REDACTED]  
MSC-06-031-14686

Office: NEWARK

Date: **MAR 25 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: 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, Newark. 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 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 entered the United States illegally and therefore cannot apply for Social Security or any form of identification. She also states that she worked, was paid in cash, and paid her bills in cash, hence no receipts. The applicant states that the affiants were under oath when they attested to their knowledge of her entry into the United States. The applicant 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.

The applicant shall be regarded as having resided continuously in the United States if at the time of filing an application for temporary resident status, no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, through the date the application is considered filed, unless the applicant can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the applicant was maintaining residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.2(h)(1).

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 applicant submitted the following attestations:

- A fill-in-the-blank affidavit from [REDACTED] in which she stated that the applicant is her niece and that she knows the applicant to have resided at [REDACTED] in Teaneck, New Jersey from February 1986 to September 1989.
- A fill-in-the-blank affidavit from [REDACTED] in which she stated that the applicant is her niece and that she knows the applicant to have resided at [REDACTED] in Hackensack, New Jersey from October 1981 to December 1985.
- A fill-in-the-blank affidavit from [REDACTED] in which she stated that the applicant is a family friend and that the applicant resided at [REDACTED] in Hackensack, New Jersey from October 1981 to December 1985; and at [REDACTED] in New York, New York from February 1986 to September 1989.
- A fill-in-the-blank affidavit from [REDACTED] in which he stated that he is the applicant's son's godfather and that the applicant has resided at [REDACTED] in Teaneck, New Jersey from October 1996 to October 2005.

Here, the affiants' statements contradict one another. Affiant [REDACTED] statement contradicts affiant [REDACTED] statement; and their statements are in turn contradicted by affiant [REDACTED] statement concerning the applicant's residence at [REDACTED] and [REDACTED] in New York. Affiant's [REDACTED] and [REDACTED] statements are inconsistent with the applicant's Form I-687 application at part #30 where she stated that she resided at [REDACTED] from March 1990 to the present (October 2005). These unresolved inconsistencies and contradictions cast doubt on the applicant's proof. 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. 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).

The affiants fail to specify when and under what circumstances they first met the applicant in the United States. They also fail to specify the nature of their relationships with the applicant during the requisite period. There is no evidence to demonstrate that the affiants had first-hand knowledge of the applicant's whereabouts or the circumstances of her residency throughout the requisite period. The affiants fail to specify the frequency with which they saw and communicated with the applicant during the requisite period.

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 affidavits submitted are contradictory and inconsistent with statements made by the applicant. The affidavits are also lacking in detail.

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 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 applicant's reliance upon evidence that is contradictory, is inconsistent with statements made by the applicant, and 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 has failed to overcome the director's grounds for denial. 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.