

**Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

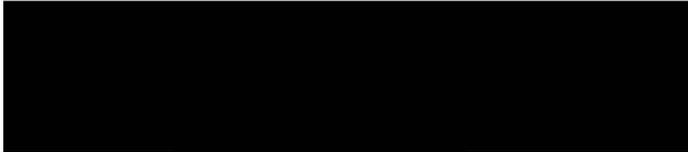
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

L1



FILE: [REDACTED]  
MSC 05 145 10530

Office: LOS ANGELES

Date: **NOV 03 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.

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, 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. The director noted that according to the applicant's Form I-687, she did not leave the country during the eligibility period.

On appeal the applicant states that her mother brought her to the United States in April 1981 as an infant. The applicant further states that the person who prepared her application forgot to mention that she left the United States for a month from March 30, 1988 to April 20, 1988.

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 photograph of the applicant as an infant and her mother sitting in a large room with other people.
2. Copies of fourteen of her mother's monthly rent receipts date beginning May 3, 1981 until January 1, 1985 for a unit at [REDACTED]
3. A copy of her mother's receipt dated May 21, 1983.
4. A notarized statement from [REDACTED] who states she has known the applicant since 1981.
5. A notarized statement from [REDACTED] who states she has known the applicant since 1981.
6. A notarized statement from [REDACTED] who states he has known the applicant since 1981.
7. A notarized statement from [REDACTED] who states she has known the applicant since 1981.

8. A notarized statement from [REDACTED] who states he has known the applicant since March 1981
9. A notarized statement from [REDACTED] who states she has known the applicant since 1981.
10. A notarized statement from [REDACTED] who states she has known the applicant since March 1981.
11. A notarized statement from [REDACTED] who states he has known the applicant since March 1981.
12. A letter from [REDACTED] who states he has known the applicant since March 1981.
13. A copy of the applicant's State of California Department of Health Services immunization record showing preventative treatments beginning on December 15, 1986.
14. A pupil accounting record dated July 21, 1989, from the Montebello Unified School District showing the applicant attended Colmar Elementary School in Bell Gardens, California from September 16, 1986 to October 5, 1987 and from April 4, 1988 to June 2, 1989, and that her home address was [REDACTED] in Bell Gardens, California.

The photograph (Item # 1 above), could have been taken in the United States or abroad. After review of the mother's file [REDACTED] the receipts (Items # 2 and # 3), are of questionable authenticity. Neither the notarized statements nor the letter (Items # 4 thru # 12), provide enough details to lend credibility to a lengthy relationship with the applicant. Based on the immunization record and the pupil accounting record (Items # 14 and #15), the AAO accepts that the applicant was present in the United States for a part of the requisite period.

On her Form I-687, the applicant stated that she resided in the United States from April 1981 to November 1989 at [REDACTED] in Bell Gardens, California. However, on her Form I-817, Application for Family Unity Benefits, filed on January 22, 2001, she stated that she first arrived in this country in March 1982, and on her second Form I-817 filed on September 22, 2003, she stated that she began her continuous residence in the U.S. in March 1982. A Form I-130, Petition for Alien Relative, filed by the applicant's step-father in her behalf indicates that she arrived in this country in November 1986.

On appeal, the applicant states that the person who prepared her application forgot to mention that she left the United States for a month from March 30, 1988 to April 20, 1988. She has submitted no evidence to support this assertion.

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's 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.