

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

41



FILE:



Office: LOS ANGELES

Date:

APR 01 2010

MSC 05 335 10455

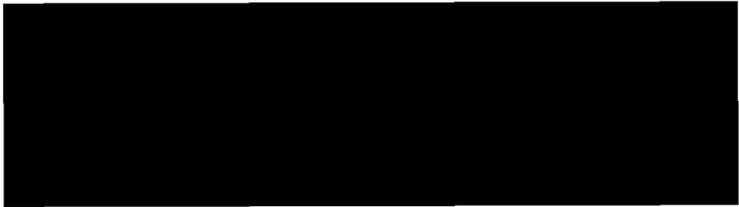
IN RE:

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.

*Elizabeth McCormack*

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 (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 denied the application, finding that the applicant failed to establish that she resided in the United States throughout the requisite period.

On appeal, counsel states that the Notice of Decision (NOD) was not preceded by a Notice of Intent to Deny (NOID) to allow the applicant the opportunity to submit a rebuttal. However, according to the settlement agreements, the director shall issue a NOID before denying an application for class membership. Here, the director adjudicated the Form I-687 application on the merits. As a result, the director is found not to have denied the application for class membership. Therefore, the director was not required to issue a NOID prior to issuing the final decision in this case. Counsel has had the opportunity to address the director's concerns on appeal.

On the Form I-694, counsel indicated that a written brief would be submitted within 30 days of receipt of the record of proceeding. Counsel requested a copy of the record of proceedings under the Freedom of Information Act (FOIA). The record reflects that the FOIA request was completed on June 24, 2009. (NRC2008031920). No additional evidence or brief has been received into the record. Accordingly, a decision will be rendered based on the evidence of record.

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 245(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)(1) 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her 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).

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 submitted sufficient credible evidence to meet her burden of establishing that she (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 1, 1982 and lived in an unlawful status during the requisite period consists of declarations written by friends and other evidence. The AAO will consider all of the evidence relevant to the requisite period to determine the applicant’s eligibility.

The applicant claimed on her Form I-687 application and in the Form I-687 interview that she entered the United States without inspection through San Ysidro on March 1, 1981. The United States Citizenship & Immigration Services (USCIS) adjudicating officer’s notes reveal that the applicant’s three children were born in Mexico on August 21, 1981, October 14, 1983 and February 17, 1986 and resided with their grandmother until 1997. In the applicant’s sworn statement dated July 24, 2006, the applicant claimed that she traveled outside the United States three times. The first absence was from September, 1982 to December, 1982; the second absence was from May, 1985 to September, 1985; and the third absence was from January, 1988, returning January, 1988. The

applicant claimed on her Form I-687 application to be absent from the United States from June, 1988, to July, 1988. She does not list her children's births in Mexico as absences or claim the three absences in 1982, 1985, and January, 1988.

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

No explanation and evidence were provided with the Form I-687 application and during the interview to show that the applicant's absences from the United States were due to emergent reasons. Therefore, by her own admission, the applicant has disrupted any period of continuous residence in the United States during the statutory period of January 1, 1982 to May 4, 1988.

The remaining evidence does not establish the applicant's continuous residence in the United States during the requisite period. The applicant submitted declarations from [REDACTED] and [REDACTED] to establish her initial entry and residence in the United States during the requisite period. In their declarations, they attest to knowing the applicant since the 1980s. The declarants attest to the applicant's good moral character and socializing with the applicant but provide no other information about the applicant.

The declarations lack the detail required to establish their credibility. The declarations do not include sufficient detailed information about the claimed relationship and the applicant's continuous residency in the United States throughout the requisite period. For instance, the declarants do not supply any details about the applicant's life, such as, knowledge about her family members, education, hobbies, employment or other particulars about her life in the United States. The declarants fail to indicate any other details that would lend credence to the claimed acquaintance with the applicant and the applicant's residence in the United States during the requisite period.

The declarations do not provide concrete information, specific to the applicant and generated by the asserted association with her, which would reflect and corroborate the extent of this association and demonstrate that the declarant had a sufficient basis for reliable knowledge about the applicant during the time addressed in the declaration. To be considered probative and credible, witness affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Therefore, the declarations have little probative value.

An applicant applying for adjustment of status under this part has the burden of proving by a preponderance of evidence that he or she is eligible for adjustment of status under section 245A of

the Act, 8 C.F.R. § 245a.2(d)(5). In the instant case, the applicant has failed to submit sufficient evidence to overcome the director's denial. The insufficiency of the evidence calls into question the credibility of the applicant's claim to have entered the United States illegally on March 1, 1981 and her continuous unlawful residence in the United States throughout the requisite period. The evidence submitted is insufficient to establish the applicant's 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 requisite period.

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.

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