

**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, D.C. 20529-2090



**U.S. Citizenship  
and Immigration  
Services**

**PUBLIC COPY**

41



FILE:

MSC 06 090 13837

Office: HOUSTON

Date:

**JAN 26 2010**

IN RE:

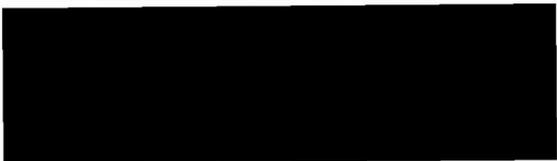
Applicant:



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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

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, Houston, Texas, 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 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 that at the time of her interview she was nervous and could not remember events that occurred many years ago. The applicant asserts that she received her wages in cash and, therefore, she has no evidence to establish her residence during the requisite period.

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 presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), “until the date of filing” shall mean until the date the alien attempted to file a completed Form I-687 application and fee or was caused not to timely file, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. Paragraph 11, page 6 of the CSS Settlement Agreement and paragraph 11, page 10 of the Newman Settlement Agreement.

An alien applying for adjustment of status 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. *See* 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 including affidavits 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.* 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 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.

In an attempt to establish continuous unlawful residence in the United States since prior to January 1, 1982, to the date she attempted to file her application, the applicant submitted:

- An affidavit from [REDACTED] who indicated that he has known the applicant since 1980 as he has been a neighbor for a very long time. The affiant indicated the applicant looked after his house when he was out of town and anytime he needed help, the applicant was there to assist him.
- An affidavit from [REDACTED] who indicated that he has known the applicant since 1982 as he was a neighbor of the applicant. The affiant indicated that he has remained friends with the applicant since that time.
- Affidavits from [REDACTED] who indicated that she first met the applicant in 1983 at her apartment complex. The affiant indicated that she has remained friends with the applicant since that time and sees the applicant at least once a week or every two weeks.
- Affidavits from [REDACTED] who indicated that she has been acquainted with the applicant since 1981 while working in housekeeping. The affiant indicated that she used to be a neighbor of the applicant and would give the applicant a ride. The affiant attested to the applicant’s June 1987 absence from the United States.
- An affidavit from [REDACTED], who attested to meeting the applicant in 1984 and to the applicant’s employment as a babysitter in her home.

- An affidavit from [REDACTED], who indicated that he met the applicant “in 1981, in [REDACTED] as working the same shift.” The affiant indicated that he has remained good friends with the applicant since that time.
- An affidavit from [REDACTED] who indicated that she met the applicant in 1984 at the applicant’s birthday party and has remained friends since that time.

On March 5, 2009, the director issued a Notice of Intent to Deny, which advised the applicant that the affidavits submitted did not contain sufficient objective evidence to which they could be compared to determine whether the attestations were credible, plausible, or internally consistent with the record. The applicant was also advised that the affidavit from [REDACTED] contradicted the employment claimed on her Form I-687 application, and the affidavits from [REDACTED] and [REDACTED] made non-credible statements concerning when and where they were neighbors of the applicant.

The applicant, in response, submitted:

- An affidavit from [REDACTED], who indicated that he met the applicant in 1980 at Assumption Church and has remained friends with the applicant since that time.
- An affidavit from [REDACTED] who indicated that he first met the applicant at a Christmas party in 1981 and attested to the applicant’s Houston residence at [REDACTED] during that time and to her 1987 absence from the United States. The affiant indicated that he and the applicant would visit each other and have remained friends since that time.
- An affidavit from [REDACTED] who indicated that she met the applicant at a friend’s birthday party in 1983.
- An affidavit from [REDACTED] who indicated that he met the applicant in 1985 at his Christmas party.
- An affidavit from [REDACTED] who indicated that she met the applicant through her mother in 1985.
- An affidavit from [REDACTED] who indicated that she has personally known the applicant since 1988.

The applicant asserted that she submitted all the evidence she had in her possession and there was no further documentation to present to establish her continuous residence in the United States during the requisite period.

The director, in denying the application on April 10, 2009, noted that no evidence was provided establishing that either [REDACTED] or the applicant was a member of the Assumption Church in 1980; [REDACTED] did not recall the name of the individual who gave the party or his address at the time; and the remaining affiants ([REDACTED] and [REDACTED]) had no first-hand knowledge of the applicant’s presence in the United States prior to January 1, 1982. The director concluded that applicant had failed to submit sufficient credible evidence establishing her continuous residence in the United States since prior to January 1, 1982.

On appeal, the applicant submits an affidavit from [REDACTED] who indicated that he has known the applicant since 1984 and attested to the applicant's moral character. The applicant asserts that neither she nor [REDACTED] were members of the church; [REDACTED] did not remember whose party it was because it was almost 30 years ago; and the affidavits from [REDACTED] and [REDACTED] were not intended to establish her residence prior to January 1, 1982. The applicant asserts, "my only reason to put these letters in was to show that on the whole, I might be able to prove my case with the combination of all of these letters, not by proving I came here in 1980, and all of them knew about it."

The statements issued by the applicant have been considered. However, the AAO does not view the documents discussed above as substantive enough to support a finding that the applicant entered the United States prior to January 1, 1982, and resided since that date through the date she attempted to file her application.

The applicant has not addressed the contradicting affidavit from [REDACTED], which indicated that he met the applicant "in 1981, in [REDACTED] as working the same shift." The applicant did not claim on her application to have been employed at a restaurant during the requisite period.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an 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, in fact, lies, will not suffice. *Matter of Ho*, 19 I. & N. Dec. 582 (BIA 1988).

While an application should not be denied solely because the applicant has only submitted affidavits to establish continuous residence in the United States for the duration of the requisite period, the submission of affidavits alone will not always be sufficient to support the applicant's claim. 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). Casting doubt to the applicant's claim that she resided in the United States continuously during the entire requisite period is the fact that the affidavits from the affiants do not provide detailed accounts of an ongoing association establishing a relationship under which the affiants could be reasonably expected to have personal knowledge of the applicant's residence, activities and whereabouts during the requisite period. To be considered probative, an affiant's affidavit 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. The affidavit must contain sufficient detail, generated by the asserted contact with the applicant, to establish that a relationship does in fact exist, how the relationship was established and sustained, and that the affiant does, by virtue of that relationship, have knowledge of the facts asserted. The affidavits from the affiants do not provide sufficient detail to establish that they had an ongoing relationship with the applicant that would permit them to know of the applicant's whereabouts and activities throughout the requisite period.

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 her

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 documents with minimal probative value, it is concluded that the evidence submitted fails to establish continuous residence in an unlawful status in the United States during the requisite period.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he has 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