

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:

MSC-05-312-13081

Office: SEATTLE

Date:

MAR 24 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. 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, Seattle. Pursuant to the regulation at 8 C.F.R. § 103.5(b), the Administrative Appeals Office (AAO) may *sua sponte* reopen or reconsider any proceeding within its jurisdiction. The decision is now before the 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 noted that the applicant failed respond to the Notice of Intent to Deny (NOID). The director further noted that the affidavits submitted on behalf of the applicant were not credible or amenable to verification. 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, counsel asserts that the director's action in denying the application was an abuse of discretion, and that the director improperly rejected affidavits and declarations submitted by the applicant. Counsel further asserts that the applicant did respond to the NOID by submitting additional affidavits that are credible and amenable to verification. Counsel requested a copy of the record of proceedings through the Freedom of Information Act (FOIA) and the request was satisfied on August 17, 2009 (NRC2008066449).

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). In support of his contention that the applicant responded to the NOID, counsel submits a copy of a FedEx tracking receipt dated September 1, 2006; with a delivery date of September 5, 2006. The AAO will consider the applicant's response to the Notice of Intent to Deny (NOID) on a *de novo* basis.

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.

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 evidence:

- Affidavits from [REDACTED] and [REDACTED] who stated that they met the applicant in October 1980 at the Sikh Temple in Yuba City, California and that

they employed the applicant as a live-in housekeeper from October 1980 to June 1989, and that the applicant lived with them at [REDACTED] during that time. This statement is inconsistent with the applicant's Form I-687 at part #33 where she stated under penalty of perjury that she was self-employed at various locations in landscaping and as a construction worker from December 1980 through June 1989.

- An affidavit from [REDACTED] in Yuba City, California who stated that he has known the applicant since 1980 and that she attended the temple and served as a volunteer. He also stated that when the applicant came to the United States she stayed at [REDACTED] in Maxwell, California, and eventually moved to Washington State. The affidavit does not conform to regulatory standards for attestations by churches. Specifically, the affiant does not show inclusive dates of membership; nor does it establish the origin of the information being attested to. 8 C.F.R. § 245a.2(d)(3)(v). Further, although the applicant indicates on her Form I-687 at part #31 that she attended [REDACTED] from January 1980 to January 1998, she declared in her statement submitted as evidence that she initially entered the United States in October 1980.
- An affidavit from [REDACTED] who stated that he owned a house cleaning and landscaping service and that the applicant worked for him cleaning houses from January 1981 through June 1989. This statement is inconsistent with the applicant's Form I-687 application at part #33 where she stated under penalty of perjury that she was self-employed as a construction/landscape worker. In addition, the affidavit does not conform to regulatory standards for attestations by employers. Specifically, the affidavit does not specify the address(es) where the applicant resided throughout the claimed employment period, or the exact dates of employment. 8 C.F.R. § 245a.2(d)(3)(i). The affiant fails to indicate whether the employment information was taken from company records. Neither has the availability of the records for inspection been clarified. 8 C.F.R. § 245a.2(d)(3)(i).
- An undated declaration from the president [REDACTED] of Washington who stated that the applicant is a regular visitor of the temple and participates in religious services on Sundays. The affidavit is inconsistent with the applicant's Form I-687 application at part #31 where she does not list any association or affiliation with this religious organization. In addition, the letter does not conform to regulatory standards for attestations by churches. Specifically, the letter does not specify the dates the applicant attended [REDACTED]; the address where the applicant resided during the membership period; nor does it establish the origin of the information being attested to. 8 C.F.R. § 245a.2(d)(3)(v).

The noted 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).

As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality; 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. None of the affiants' statements provide detailed information, specific to the applicant and generated by the asserted associations with her, which would reflect and corroborate the extent of those associations and demonstrate that they were a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the affidavits. 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. Upon review, the AAO finds that, individually and collectively, the witness statements do not indicate that their assertions are probably true. Therefore, they have little probative value.

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. Although counsel asserts that no attempts have been made to contact the affiants and to verify the content of their statements, she fails to advance any reason as to why any attempt should be made in light of the minimal probative value of the applicant's evidence of residence. The applicant has failed to overcome the director's basis for denial.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period and the inconsistencies and contradictions found in the record seriously detract 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 inconsistencies found in the record and the applicant's reliance on evidence that is lacking in detail and which has little probative value, 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 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.