

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 (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



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



L1

FILE: [Redacted]
MSC 05 188 13319

Office: LOS ANGELES

Date:
APR 06 2011

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. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case 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.

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 terminated 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 application was approved on July 19, 2005. The director terminated the application on August 12, 2010, finding that the applicant did not file a timely Form I-698, Application to Adjust Status from Temporary to Permanent Resident.

On appeal, the applicant asserts that she has established her unlawful residence for the requisite time period. On the Form I-694, the applicant argues that she relied on [REDACTED] to file the Form I-698 and that it is not her fault that she did not file a timely Form I-698. The applicant asks that she be permitted to file a Form I-698. The applicant did not submit any evidence on appeal. As of this date, the AAO has not received any additional evidence from the applicant. Therefore, the record is complete.

The status of an alien lawfully admitted for temporary residence under section 245A(a)(1) of the Act may be terminated at any time if the alien fails to file for adjustment of status from temporary to permanent resident on Form I-698 within forty-three months of the date he/she was granted status as a temporary resident under § 245a.1 of this part. 8 C.F.R. § 245a.2(u)(1)(iv).

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.

The issue in this proceeding is whether the applicant (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 1982 and lived in an unlawful status during the requisite period consists of affidavits of relationship written by friends and an employer, identification cards, a notice to appear in traffic court, and photographs.

The affidavits from [REDACTED] all contain statements that the affiants have known the applicant for years and that they attest to the applicant being physically present in the United States during the requisite period. These affidavits fail, however, to establish the applicant's continuous unlawful residence in the United States for the duration of the requisite period. 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.

The affidavits in the record of proceeding provide inconsistent information regarding the applicant's addresses during the requisite period. In his affidavit, [REDACTED] states that the applicant lived in his house [REDACTED] from March 1980 to November 1981.¹ [REDACTED] also states that the application received mail at his home. The record contains two affidavits from [REDACTED]. In her affidavit dated March 20, 1991, [REDACTED] states that the applicant lived with her at [REDACTED] September 1981 to December 1983 and at [REDACTED] California from December 1983 to December 1986. [REDACTED] also states that the applicant did household chores in exchange for room and board. In her affidavit dated June 28, 1993, [REDACTED] states that the applicant lived in her home at [REDACTED] California from December 1, 1981 to December 1986. In her affidavit, [REDACTED] states that the applicant lived with her on the weekends at [REDACTED] California from June 1981 to May 1990. The affidavits provided by [REDACTED] are inconsistent with each other and provide different addresses during the requisite time period. [REDACTED] 1991 affidavit and [REDACTED] affidavit are also inconsistent and state that the applicant lived in both of their homes from September 1981 to November 1981.

The record contains two Forms I-687 which provide inconsistent information. In the Form I-687 signed in 2005, the applicant states that she lived at [REDACTED] from March 1980 to November 1990 and [REDACTED] from December 1981 to December 1986. The applicant's Form I-687 signed in 1991 states that the applicant lived at [REDACTED], California from September 1981 to December 1983, at [REDACTED] California from December 1983 to December 1986, and [REDACTED] California from June 1981 to May 1990. The Forms I-687 provide two different addresses for the applicant from December 1981 to December 1983 and neither Form I-687 lists the address at [REDACTED] California.

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. 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. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

None of the witness statements provide concrete 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

¹ The AAO notes that this is the applicant's current address.

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 together, the witness statements do not indicate that their assertions are probably true. Therefore, they have little probative value.

The record also contains an employment letter on Superior Temporary Services letterhead dated January 15, 1991 signed by [REDACTED] states that the applicant worked for the company from August 10, 1987 to January 4, 1991. The letter fails to meet certain regulatory standards set forth at 8 C.F.R. § 245a.2(d)(3)(i), which provides that letters from employers must include the applicant's address at the time of employment; exact period of employment; whether the information was taken from official company records and where records are located and whether USCIS may have access to the records; if records are unavailable, an affidavit form-letter stating that the employment records are unavailable may be accepted which shall be signed, attested to by the employer under penalty of perjury and shall state the employer's willingness to come forward and give testimony if requested. The letter from [REDACTED] does not include much of the required information and can only be accorded minimal weight as evidence of the applicant's residence in the United States for the duration of the requisite period. Furthermore, the AAO notes that the applicant did not list Superior Temporary Services as an employer on the 2005 Form I-687.

The affidavits presented provide contradictory information, and no explanation is provided for those contradictions. The contradictions are material to the applicant's claim in that they have a direct bearing on the applicant's residence in the United States during the requisite period. The employment evidence provided by the applicant, therefore, is not deemed credible and shall be afforded little weight. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. 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. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The record of proceeding also contains several copies of photographs of the applicant with handwritten dates from 1984 to 1987. Although photographs may indicate presence in the United States on the dates listed, they cannot be verified and therefore, can only be accorded minimal weight as evidence of residence.

The record also contains a copy of the applicant's California identification card issued on December 14, 1984; copies of the applicant's COL/VOC identification card with a monthly stamp for February 1987 and March 1987; and a copy of the applicant's 1987 notice to appear in

traffic court. These documents evidence the applicant's presence in the United States on the respective dates issued. Taken individually and together with other evidence of record, these documents have minimal probative value in supporting the applicant's claims that she entered the United States in 1981 and resided in the United States for the entire requisite period.

Finally, the AAO notes that the Forms I-687 contain additional inconsistent information. The 1991 Form I-687 lists only one employer, Superior Temporary Services from August 1987 to present. The 2005 Form I-687 lists the applicant as self-employed as a housekeeper from March 1980 to November 1981, employed by [REDACTED] as a babysitter from December 1981 to December 1986,² employed by Beverly (cross personal services) as a laborer from January 1987 to November 1987, and employed as a housekeeper from December 1987 to December 1990. The 1991 Form I-687 lists one absence from May 5, 1987 to May 16, 1987. The 2005 Form I-687 lists an absence in 1990 and an absence from December 27, 2000 to March 2001.

The director issued a notice of intent to terminate (NOIT) on July 7, 2010. The director terminated the application for temporary residence on August 12, 2010, finding that the applicant did not file a timely Form I-698, Application to Adjust Status from Temporary to Permanent Resident.

On appeal, the applicant has not submitted any evidence that establishes that she was physically present or had continuous residence in the United States during the requisite period or that she entered the United States prior to January 1, 1982.

The applicant suggests that the director's adjudication of the petition was unfair. The applicant has not demonstrated any error by the director in conducting its review of the petition. Nor has the applicant demonstrated any resultant prejudice such as would constitute a due process violation. *See Vides-Vides v. INS*, 783 F.2d 1463, 1469-70 (9th Cir. 1986); *Nicholas v. INS*, 590 F.2d 802, 809-10 (9th Cir. 1979); *Martin-Mendoza v. INS*, 499 F.2d 918, 922 (9th Cir. 1974), *cert. denied*, 419 U.S. 1113 (1975).

Although the applicant states that she was not assisted by an attorney but by an agent, there is no remedy available for an applicant who assumes the risk of authorizing an unlicensed attorney or unaccredited representative to undertake representations on his behalf. *See* 8 C.F.R. § 292.1. The AAO only considers complaints based upon ineffective assistance against accredited representatives. *Cf. Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988)(requiring an appellant to meet certain criteria when filing an appeal based on ineffective assistance of counsel).

² The AAO notes that neither of [REDACTED] affidavits stated that the applicant worked for her as a babysitter.

There are many inconsistencies in the record of proceeding. These inconsistencies are material to the applicant's claim in that they have a direct bearing on the applicant's residence in the United States during the requisite period. As stated previously, 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. *See Matter of Ho, supra.*

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 on this basis. The director's decision terminating the applicant's temporary status is affirmed.

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