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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W. MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

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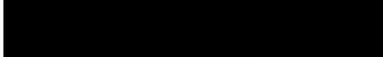


EL

DATE: MAY 31 2012

OFFICE: LOS ANGELES, CA

FILE: 

IN RE: Applicant: 

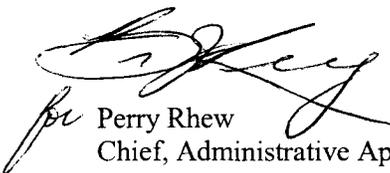
APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C § 1255a.

ON BEHALF OF APPLICANT: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the National Benefits Center. 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.

Thank you,

  
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, or *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 Field Office Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

On December 22, 2005, the applicant filed an application for status as a temporary resident (Form I-687). On August 15, 2011, the director of the Los Angeles office denied the I-687 application, finding that the applicant had failed to establish her entry into the United States before January 1, 1982, and her continuous unlawful residence and continuous physical presence in the United States throughout the requisite period. The decision is now before the AAO on appeal.

In his denial notice, the director noted that the record includes the applicant's kindergarten records from [REDACTED] which establishes her continuous residence in the United States during the years from 1984 to 1986. The director also noted that the record included report cards in the name of [REDACTED] for school years 1987-1988, and 1988-1989 from [REDACTED] but the applicant did not submit her school transcripts from that school district. In addition, the director noted that the applicant did not provide her immunization records as requested by the director to establish her continuous unlawful residence in the United States prior to commencing kindergarten in 1984.

The AAO has reviewed all of the evidence, and has made a *de novo* decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.<sup>1</sup>

In an April 11, 2012 Notice of Intent to Deny (NOID), the AAO notified the applicant that upon review of the record the AAO intended to dismiss her appeal. We provided the applicant with an opportunity to respond before rendering our final decision. The record reflects that the applicant submitted additional evidence in response to the NOID.

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).

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<sup>1</sup>The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

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).

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. 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. *Matter of Ho*, 19 I & N Dec. 582, 591-592 (BIA).

At the time of completing her Form I-687 application, the applicant indicated that she had resided in the United States since 1980, and listed residences in the United States during the requisite period. The record includes the applicant's birth certificate which confirms that [REDACTED] is a part of her name. The applicant has submitted as proof of her asserted date of entry into the United States and continuous residence in the United States during the requisite period, school records from the [REDACTED] and transcripts from [REDACTED] [REDACTED] which establishes her continuous residence from September 1984.

The AAO noted in the NOID that the record lacks evidence of the applicant's continuous residence prior to 1984. We also note the applicant's response, on appeal, and in response to the NOID, that her efforts to obtain her immunization records have been unsuccessful. In addition, we note the long passage of time since the applicant's immunization records may have been provided to her school district for admission into kindergarten when the applicant was about four years of age. The record includes a statement from the applicant describing her futile efforts to obtain her immunization records in an attempt to establish her continuous residence prior to September 1984.

In an attempt to establish her continuous residence from prior to January 1, 1982 to September 1984, the period at issue, in lieu of documentation such as her unavailable immunization records, the applicant has submitted a declaration from [REDACTED] who details her acquaintance with the applicant and the applicant's family and her familiarity with the facts and circumstances

surrounding the applicant's entry and residence in the United States. [REDACTED] declares that she first met the applicant and her parents in 1980 in [REDACTED] California, when the applicant was an infant. [REDACTED] describes, with particularity, her activities with the applicant and the applicant's parents who were family friends, and she provided photographs depicting the applicant and her family. [REDACTED] declaration is sufficiently detailed to be accorded significant weight.

The documentation provided, individually and cumulatively, establishes the applicant's continuous residence in the United States in an unlawful status throughout the requisite period. The contemporaneous documents submitted by the applicant appear to be credible. The letters, declarations and affidavits submitted by the applicant appear to be credible and amenable to verification in that each includes contact telephone numbers and/or contact addresses.

The director has not established that the information on the many supporting documents in the record was inconsistent with the applicant's testimony or with the claims made on her Form I-687 application; that any inconsistencies exist *within* the claims made on the supporting documents; or that the documents contain false information. As stated in *Matter of E-M-*, 20 I&N Dec. at 80, when something is to be established by a preponderance of the evidence, the proof submitted by the applicant has to establish only that the asserted claim is probably true. That decision also states that, under the preponderance of evidence standard, an application may be granted even though some doubt remains regarding the evidence. *Id.* at 79. The documents that have been furnished in this case may be accorded substantial evidentiary weight and are sufficient to meet the applicant's burden of proof of residence in the United States for the requisite period.

The applicant has established by a preponderance of the evidence that she entered the United States before January 1, 1982 and maintained continuous, unlawful residence for the duration of the requisite period. Consequently, the applicant has overcome the particular basis of denial cited by the director.

The appeal will be sustained. The director shall continue the adjudication of the application for temporary resident status.

ORDER:        The appeal is sustained.