



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

(b)(6)



DATE: **JUN 08 2015**

FILE: [REDACTED]
APPLICATION RECEIPT: [REDACTED]

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:

NO REPRESENTATIVE OF RECORD

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Los Angeles Field Office Director (director) denied the application for temporary resident status, filed 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). The matter 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 (the Act), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet. The director denied the application, finding 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.

On appeal, the applicant asserts that the director erred in denying the application. She submits a letter from the Special Master, who she asserts approved her case.¹

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. *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 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. 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

¹ The Special Master’s decision is limited to the applicant’s application for class membership.

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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's 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).

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. *See* 8 C.F.R. § 245a.2(d)(6). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate entry into the United States prior to January 1, 1982, and continuous residence and her physical presence in the United States throughout the requisite period.

The applicant claims that she has resided in the United States since 1980. In support of her claim, she submitted the following:

- A birth certificate for [REDACTED] born on [REDACTED] 1979, in [REDACTED] Mexico. The certificate lists the child's mother's name as [REDACTED].
- A birth certificate for [REDACTED] born on [REDACTED] 1982, in [REDACTED] Mexico. The certificate lists the child's mother's name as [REDACTED].

- A birth certificate for [REDACTED] born on [REDACTED] 1983, in [REDACTED] California. The certificate lists the child's mother's name as [REDACTED]
- A birth certificate for [REDACTED], born on [REDACTED] 1985, in [REDACTED] California. The certificate lists the child's mother's name as [REDACTED]
- A birth certificate for [REDACTED] born on [REDACTED] 1990, in [REDACTED] California. The certificate lists only the child's mother's surname, as [REDACTED]
- A birth certificate for [REDACTED] born on [REDACTED], 1992, in [REDACTED] California. The certificate lists the child's mother's birth name as, as [REDACTED]

The applicant's name, [REDACTED] is listed on only one of the birth certificates. The remaining five certificates each list a different name for the mother and there is no documentation of record to establish that the applicant is the same person as the individuals listed on these birth certificates as the mother, namely, [REDACTED] and [REDACTED]

The regulation at 8 C.F.R. § 245a.2(d) states in pertinent part that:

(2) *Assumed names - (i) General.* In cases where an applicant claims to have met any of the eligibility criteria under an assumed name, the applicant has the burden of proving that the applicant was in fact the person who used that name The assumed name must appear in the documentation provided by the applicant to establish eligibility. To meet the requirements of this paragraph documentation must be submitted to prove the common identity, i.e., that the assumed name was in fact used by the applicant.

(ii) *Proof of common identity.* The most persuasive evidence is a document issued in the assumed name which identifies the applicant by photograph, fingerprint or detailed physical description. Other evidence which will be considered are affidavit(s) by a person or persons other than the applicant, made under oath, which identify the affiant by name and address, state the affiant's relationship to the applicant and the basis of the affiant's knowledge of the applicant's use of the assumed name. Affidavits accompanied by a photograph which has been identified by the affiant as the individual known to affiant under the assumed name in question will carry greater weight.

Moreover, the birth certificate for [REDACTED] appears to have been altered to read [REDACTED] in the registration attestation section. In addition, the birth certificate indicates that both parents were present at the registration of the child's birth on [REDACTED] However, on her Form I-687, at Section 32, the applicant listed only one absence from the United States in 1982, from October 1, 1982 to October 10, 1982.

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The applicant submitted evidence relating to her residence after the requisite period. This evidence will not be addressed in this decision as it is not relevant to her claim. The evidence of record includes the following:

- An application for death record for [REDACTED], dated [REDACTED] 1985, issued to [REDACTED]
- A mail envelope, date-stamped July 6, 1985, and addressed to [REDACTED], at [REDACTED]
- Various rent receipts, issued to "[REDACTED]," dated in 1983, 1984, 1985, and 1986.
- Three pay stubs for [REDACTED] from [REDACTED], located in [REDACTED] California, dated in April and May 1984.
- Two pay stubs for [REDACTED], and five pay stubs for [REDACTED], issued in April and May 1982.
- An application for birth record of [REDACTED] date-stamped, November 7, 1983, listing [REDACTED] as the mother.
- 24 rent receipts from [REDACTED] located in [REDACTED] California, issued to "[REDACTED]"
- Four rent receipts dated in January 1982, March 1982, May 1982, and November 1982, issued to "[REDACTED]" from [REDACTED] located in [REDACTED] California.
- A death certificate for [REDACTED] dated May 28, 1985, issued to [REDACTED]

As noted above, the applicant has not established that the documents issued in assumed names were issued to her. Documents issued in a single surname, rather than in a full name, will not be given evidentiary weight. Similarly, documents issued to a business, i.e., "[REDACTED]" will not be given weight.

The evidence must be evaluated not by the quantity of evidence alone but by its quality. 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 its amenability to verification. Given the absence of credible supporting documentation, the applicant has failed to meet his burden of proof and failed to establish continuous residence in an unlawful status in the United States during the requisite period. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act. The application was correctly denied on this basis, which has not been overcome on appeal.

The regulation at 8 C.F.R. § 245a.15(c)(1) provides that an alien shall be regarded as having resided continuously in the United States if no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed.

If the applicant's absence exceeded the 45-day period allowed for a single absence, it must be determined if the untimely return of the applicant to the United States was due to an "emergent reason." Although this term is not defined in the regulations, *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), holds that "emergent" means "coming unexpectedly into being."

The applicant indicates on her Form I-687 that she departed the United States for Mexico on October 1, 1982 to give birth to her child, and that she returned to the United States on October 10, 1982. As noted above, however, the birth certificate for [REDACTED] born on [REDACTED] 1982, in [REDACTED] Mexico, indicates that both parents were present at the registration of the child's birth in Mexico on [REDACTED]. The period from October 10, 1982 to December 23, 1982, amounts to an absence of 79 days. The applicant does not provide an explanation for her prolonged absence and she has failed to provide any documentation that her prolonged absence, exceeding 45 days, was due to emergent reasons, or that her return to the United States could not be accomplished within the time period allowed.

The applicant cannot establish that she resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988, as she has exceeded the forty-five (45) day limit for a single absence from the United States during this period, as set forth in 8 C.F.R. § 245a.15(c)(1)(i). The applicant is, therefore, ineligible for Temporary Resident Status under section 245A of the Act on this basis.

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 periods. 8 C.F.R. § 245a.2(d)(5). Here, the applicant has not met her burden of proof. Consequently, the director's decision to deny the application is affirmed.

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