

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



LI

FILE: [Redacted]
MSC-05-279-13554

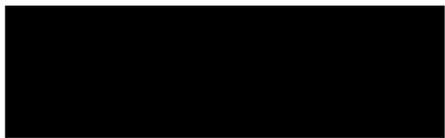
Office: BALTIMORE

Date: DEC 03 2007

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:



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.

Robert P. Wiemann, 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 District Director, Baltimore. 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, on July 6, 2005. The director determined that the applicant had failed to prove by a preponderance of the evidence that 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 that she is otherwise eligible for adjustment of status under this section. The director identified inconsistencies in the information the applicant provided regarding her failure to present additional evidence of her entry into the United States. The director also noted that certain information was absent from an affidavit provided for the applicant.

On appeal, the applicant attempted to explain the inconsistencies in the information she had already provided. She submitted documentation to support this explanation. Lastly, the applicant provided an additional affidavit that included some of the information the director had noted was absent.

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).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "until the date of filing" shall mean until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file. 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 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.* 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 (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 that she resided in the United States from prior to January 1, 1982 through the date she attempted to file a Form I-687 application with the Immigration and Naturalization Service (INS) in the original legalization application period of May 5, 1987 to May 4, 1988. Here, the submitted evidence is not relevant, probative, and credible.

The record includes the Form I-687 application and Form I-687 Supplement, CSS/Newman Class Membership Worksheet, submitted by the applicant to Citizenship and Immigration Services (CIS) on July 6, 2005. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant failed to indicate she resided in the United States during the requisite period.

In response to a Notice of Intent to Deny Application for Status as a Temporary Resident issued on November 15, 2005, the applicant provided a declaration from [REDACTED] dated December 12, 2005. In this declaration, [REDACTED] stated that he first met the applicant in 1979. He stated that he met her while he was running marathons in Los Angeles in July 1983, in Chicago in October 1984, and in Boston in 1986 and April 1987. [REDACTED] failed to provide any information regarding the length of time he spent with the applicant at these specified times and locations, or any contact he had with the applicant in the United States at any time other than these specified times. This declaration does not specifically confirm the applicant resided in the United States throughout the requisite period.

In denying the application, the director determined that the applicant had failed to prove by a preponderance of the evidence that 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 that she is otherwise eligible for adjustment of status under this section. The director identified inconsistencies in the information the applicant provided regarding her failure to present additional evidence of her entry into the United States. Specifically, the applicant stated that she misplaced her passport issued in 1981, yet the copy she provided of a page from a later passport states that the 1981 passport was cancelled and returned, rather than that it was lost. The director also noted that certain information was absent from a declaration provided for the applicant. Specifically, the declarant failed to provide his age; phone number; a form of identification by which to verify his identity, immigration status, or travel history; a telephone number to ascertain whether his testimony is credible; and significant details regarding the applicant's immigration status and continuous presence or residence in the United States.

On appeal, the applicant attempted to explain the inconsistencies in the information she had already provided. She submitted documentation to support this explanation. Specifically, the applicant provided a letter from an official in Kenya describing the Kenyan practice of indicating a passport was cancelled and returned even in the case where it was stolen. The applicant also provided a declaration from her husband, [REDACTED]. This declaration is illegible in certain key places, but it appears to state that the applicant traveled to the United States with her husband in 1981 and the applicant stayed in the United States when her husband returned to Kenya. The declaration also appears to state that the applicant took short trips out of the United States from 1986 to 1991. [REDACTED] failed to provide detail regarding where the applicant resided in the United States. Since [REDACTED] is the applicant's husband and traveled with her to the United States, it is reasonable to expect that he would be able to provide considerable detail regarding her periods of residence in the United States. Also, this declaration does not specifically confirm she continuously resided in an unlawful status throughout the requisite period. Lastly, the applicant provided an additional affidavit from [REDACTED] dated March 27, 2007 that included [REDACTED] of birth, immigration status, and contact information. This affidavit also fails to specifically confirm the applicant resided in the United States throughout the requisite period.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period, failed to indicate on Form I-687 that she resided in the United States during the requisite period, and has submitted affidavits and declarations that lack detail regarding her residence in the United States and do not specifically confirm she resided in the United States throughout the requisite period.

The absence of sufficiently detailed and consistent supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts 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 applicant's reliance upon documents with minimal probative

value, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the date she attempted to file a Form I-687 application 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.