



U.S. Citizenship
and Immigration
Services

PUBLIC COPY
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



LL

FILE:



Office: CLEVELAND

Date:

DEC 18 2007

MSC 05 213 10082

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 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, Cleveland, Ohio. 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 May 1, 2005. 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 found that the information contained in the affidavits submitted by the applicant was insufficient to establish the applicant's continuous residence in the United States from prior to January 1, 1982 until the date on which she attempted to file a legalization application. The director denied the application as 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, the applicant asserts that the denial of the application was unfair, as the applicant was not able to retain documentation related to her initial application, which was rejected in June 1987, due to her multiple moves during the 18-year period between applications. She notes that two of the provided affidavits were particularly significant, those of [REDACTED] and [REDACTED], and asserts that other affidavits provided in support of the application "confirmed the two principal affidavits and added weight to them." She indicates that the addresses and telephone numbers of all affiants were provided to allow for verification.

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).

An applicant shall be regarded as having resided continuously in the United States if, at the time of filing no single absence from the United States has exceeded forty-five (45) days and the aggregate of all absences has not exceeded one hundred eighty (180) days between January 1, 1982 and the date of filing his or her application for Temporary Resident Status unless the applicant establishes that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed. 8 C.F.R. § 245a.2(h)(1)(i).

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 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 that she resided in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application with the Service 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 shows that the applicant submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on May 1, 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 showed that she continuously resided at [REDACTED], Bronx, New York from October 1981 until July 1987. At part #33 of the applicant's Form I-687, where she was asked to list all of his employment in the United States since she first entered, she did not indicate that she was employed during this period.

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. 8 C.F.R. § 245a.2(d)(5). To meet his burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony. 8 C.F.R. §

245a.2(d)(6). The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that an applicant may submit to establish proof of continuous residence in the United States during the requisite period. This list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts or letters. An applicant may also submit any other relevant document pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The applicant submitted a statement in support of her application. She stated that she entered the United States in October 2001 using documentation that was not her own, and that her friend [REDACTED] provided her room and board. She indicated that she worked by selling art objects, braiding and cooking African meals, but did not state where she worked or clarify why she stated on Form I-687 that she was not employed during the requisite period. She states that her legalization application and fee were refused by the INS office in New York in June 1987 because she had traveled to Senegal and returned with a visitor visa in 1985.

The applicant submitted the following evidence in support of her application:

- An affidavit from the applicant's brother, [REDACTED], who certified that the applicant lived in the United States from October 1981 until 1987. [REDACTED] provided a copy of a Senegalese national identification document as proof of his identity. He stated that the applicant entered the United States in October 1981 "with the help of a business partner," returned to Senegal for a short visit in 1985, and that during her stay in the United States, she "behaved well and worked hard." [REDACTED] does not state how frequently he communicated with the applicant during this period, or whether he ever visited the applicant in the United States, nor does he provide the address at which the applicant resided during this period. The affidavit lacks significant detail and does not reflect the affiant's personal knowledge of the applicant's continuous residence in the United States. As such, the statement can be afforded minimal weight as evidence of the applicant's continuous residence and presence in the United States for the requisite period.
- A notarized declaration from [REDACTED] who states that she is the executive director of an international Non-Government Organization with eleven affiliates in Africa, and that she "had the opportunity to meet and assist many African visitors and immigrants to the United States." [REDACTED] provided a copy of her New York State driver's license and U.S. passport as proof of her identity. [REDACTED] states that she first met the applicant in the United States in 1981 when she was introduced to her by a mutual friend. She states that the applicant was an "honest business woman" and "contributing member of the community" who subsisted by reselling African paraphernalia and braiding. [REDACTED] states that the applicant returned to Senegal in 1987. The statement lacks any details that would lend credibility to an alleged 24-year relationship with the applicant; it is not accompanied by any evidence that [REDACTED] resided in New York during the relevant period; it does not indicate how frequently

the affiant had contact with the applicant during the relevant period; and it does not indicate that the affiant had personal knowledge of the applicant's address of residence. Thus, this declaration can be afforded minimal weight as evidence of the applicant's residence and presence in the United States for the requisite period.

- A notarized affidavit from [REDACTED] who states that he met the applicant at the New York Immigration and Naturalization Service (INS) office when she applied for the Amnesty Program "in effect at that time." [REDACTED] provided a copy of his U.S. passport as proof of his identity. He states that he served as a per-diem interpreter during the applicant's interview, and states that she was denied adjustment of status because of a short trip made outside of the United States. [REDACTED] does not indicate on what date he met the applicant. Nevertheless, if he first met the applicant during the initial legalization application period between May 5, 1987 and May 4, 1988, his statement cannot verify her continuous residence in the United States from prior to January 1, 1982 until the date on which he met her, which is assumed to be no earlier than May 1987. Because of its lack of detail and failure to address the affiant's knowledge of the applicant's residence prior to 1987, this affidavit can be given little weight in support of the applicant's claims.
- A notarized affidavit from [REDACTED] who indicated an address in Senegal and stated that he has known the applicant as a family friend since childhood. He provided a copy of his New York State driver's license as proof of his identity. He stated that he remembers that the applicant left Senegal in 1981. He stated that he joined the applicant in New York City in 1985 when he arrived in the United States for the first time, "regained contact" with her and asked her to be a witness at his wedding in August 2005. [REDACTED] stated that the applicant returned to Senegal in 1987. The applicant does not state that he had any direct personal knowledge of the applicant's continuous residence in the United States and in fact, his statement suggests that he was not in contact with her between 1981 and 1985. He does not indicate where the applicant was residing when he visited her in 1985, nor does he provide details that would lend credibility to their claimed friendship of 30 or more years. Although he claims contact with the applicant in New York in 1985, the affiant does not indicate where his wedding took place, or provide evidence that the applicant did in fact serve as a witness to the event. It is noted that the applicant indicated on her Form I-687 that she traveled to Senegal from July to August 1985, but she stated that she traveled there because her father was ill, not for the purpose of attending a wedding. Because the affidavit lacks detail and does not indicate that the affiant had personal knowledge of the applicant's presence in the United States beyond a meeting in 1985, it can be afforded minimal weight as evidence of the applicant's continuous residence.
- A notarized declaration from [REDACTED] who states that she first met the applicant in Senegal in 1979. She states that a mutual friend introduced her to the applicant's family¹ and she was invited to visit the family in Dakar. She states that she traveled to Senegal numerous times and was often a guest at the family's home. [REDACTED] states that the applicant

¹ The affiant refers to her acquaintance with the "[REDACTED] family" since 1979. It is noted that the applicant's maiden name is [REDACTED] and the record does not indicate when she married and took the surname of [REDACTED]

arrived in the United States in 1981 and stayed with [REDACTED]'s family at her home in Bronx, New York, during which time she sold African art, clothes and provided African braiding services. She states that the applicant participated in family affairs such as birthday parties, wedding parties, baby-naming ceremonies and family reunions. She indicates that the applicant returned to Senegal in 1987 after her amnesty application was rejected. It is noted that [REDACTED]'s address is the same address listed by the applicant on Form I-687 as her place of residence from October 1981 until July 1987. [REDACTED] provided a copy of her New York State driver's license confirming her identify and address of residence. However, the affiant has not provided evidence that she resided at her current address during the requisite period, and the lack of detail regarding the events and circumstances concerning the applicant's residence in the United States is questionable, given the affiant's statement that the applicant resided with her during the entire period between 1981 and 1987. She indicates that the applicant supported herself by selling African art and clothes and by performing African hair braiding, but does not provide any information regarding where the applicant worked. The affiant states that the applicant attended family events such as reunions, weddings, and birthday parties, but the record contains no photographs or other evidence that would corroborate her claimed 26-year relationship with the applicant, the applicant's participation in the affiant's major family events, and the applicant's lengthy residence in the affiant's home. Given the lack of significant detail, this affidavit carries limited weight in establishing the applicant's continuous residence in the United States during the requisite period.

- An affidavit from [REDACTED], who indicates a Bronx, New York address, and states that he has known the applicant since 1981, when he and the applicant both arrived in the United States. The affiant states that he remembers that the applicant was living "in [REDACTED]'s house at Concourse Village West in Bronx" until 1987. The affiant states that the applicant was selling African clothes and art, doing African braids, and that sometimes he helped her to get customers. He states that he often met the applicant at his house with friends to listen to African music and share Senegalese meals. The statement lacks any details that would lend credibility to an alleged 24-year relationship with the applicant; it is not accompanied by any evidence that [REDACTED] resided in New York for the relevant period; it is inconsistent with the applicant's statement on her Form I-687 that she was not employed in the United States prior to 1997; and it fails to state how the affiant met the applicant, how he dates their initial acquaintance, how frequently he had contact with the applicant; and whether there were any period in which they did not have any contact during the requisite period. As such, the statement can be afforded minimal weight as evidence of the applicant's residence and presence in the United States for the requisite period.

The applicant was interviewed under oath by a CIS officer on December 8, 2005. On February 2, 2006, the director issued a notice of intent to deny the application, advising that upon review of the evidence submitted and the testimony from the interview, the applicant had not demonstrated eligibility for the benefit sought by the preponderance of the evidence standard. The applicant was granted 12 weeks to submit additional evidence in response.

In response to the Notice of Intent to Deny, the applicant re-submitted copies of two of the affidavits previously provided in support of her application. She emphasized that when her application was rejected in 1987, she had no reason to believe that she would have an opportunity to re-submit an application 18 years later and therefore did not retain her application or the proof that accompanied it. She also stated that she had to move several times, to Senegal, back to the United States, to Canada, back to Senegal, and finally, back to the United States again in 1996. She provided the telephone numbers for [REDACTED] and [REDACTED] and requested that the director review the affidavits and any verification provided by her affiants.

The director denied the application on May 18, 2006. In denying the application, the director determined that the applicant's response to the Notice of Intent to Deny was insufficient to overcome the grounds for denial stated therein.

On appeal, the applicant re-iterates the assertions she made in response to the notice of intent to deny with respect to her inability to maintain proof of her residence in the United States over the course of time and several relocations between North America and Africa. The applicant emphasizes that she feels the testimony of [REDACTED] and [REDACTED] are particularly significant to her claim, and she asserts that the other testimonies "confirmed the two principal affidavits and added weight to them." She once again emphasizes that the addresses and telephone numbers for all individuals were provided for verification purposes.

As discussed above, the affidavit of [REDACTED] does not indicate the date on which he first met the applicant, but based on his statements, he had no acquaintance with the applicant prior to May 1987. Given [REDACTED] inability to personally confirm the applicant's continuous residence in the United States during the requisite period, it is noted that the director had no compelling reason to contact him for verification.

In addition, while [REDACTED] does claim to have knowledge of the applicant's continuous residence in the United States throughout the requisite period, she provided little specific, verifiable information regarding the circumstances and events of the applicant's residence. As discussed, the lack of detail is notable based on [REDACTED] claim that she providing board and housing for the applicant for a period of six years and invited the applicant to attend her own family's reunions, weddings, parties and other events. A verbal verification from [REDACTED] of the minimal information provided in the affidavit, without more detail or corroborating contemporaneous evidence, would be insufficient to establish the applicant's claim of continuous residence in the United States in an unlawful status during the requisite period.

Further, it is noted that the applicant was given notice that the evidence provided with her initial application, which consisted of the above-referenced affidavits, was not sufficient to establish her eligibility for the benefit sought. If the applicant believes that her affiants have additional information to offer in support of her application, it is unclear why she did not attempt to obtain such information during the 12-week period she was given to prepare a response to the director's notice of intent to deny her application. Such evidence could have consisted of further affidavit evidence from the same or additional

affiants, providing additional details regarding their knowledge of the applicant's residence. 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. 8 C.F.R. § 245a.2(d)(5).

As is stated above, 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). The applicant has been given the opportunity to satisfy her burden of proof with a broad range of evidence pursuant to 8 C.F.R. § 245a.2(d)(3). However, this applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period, and has submitted attestations from only six (6) affiants, who offer few details regarding their knowledge of their knowledge of the applicant's continuous residence.

The absence of sufficiently detailed 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 limited 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 he 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.