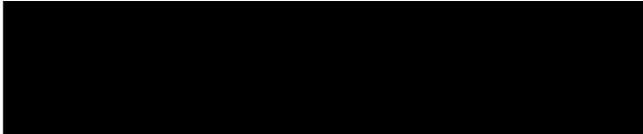




U.S. Citizenship
and Immigration
Services

PUBLIC COPY

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



LA

FILE:  Office: NEW YORK Date: **DEC 18 2007**
MSC 05 052 10028

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:


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, New York, New York. 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 November 21, 2004. The district 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 district 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 reiterates her claim of entry into the United States in 1981 and continuous residence in the United States in an unlawful status throughout the requisite period.

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 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 November 21, 2004. At part #30 of the Form I-687 application where applicants are instructed to list all residences in the United States since first entry, the applicant indicated that she resided at [REDACTED] New York” from January 1981 to July 1990. The applicant did not submit any evidence in support of her claim of continuous residence in the United States during the requisite period.

During her interview with a CIS officer on March 7, 2006, the applicant claimed that she first entered the United States in 1981 at John F. Kennedy International Airport, New York, New York, using another person’s passport containing a nonimmigrant student visa.

In a separate proceeding, the applicant filed a Form I-589, Request for Asylum in the United States, with the Immigration and Naturalization Service (the Service), now Citizenship and Immigration Services (CIS), on December 28, 1992. The applicant indicated on the Form I-589 that she arrived in the United States at New York, New York, on January 26, 1990. At part #18 of the asylum application, where applicants are asked to explain why they are seeking asylum in the United States, the applicant stated that she was a member of the Deeper Life Bible Church in

Nigeria and preached the gospel in her country "when I found time." She claimed that "mobs of Moslem fundamentalists threatened and beat me when I was preaching in November 1989." She further stated that she went to the police in mid-November 1989, "but they told me that I have to be investigated and detained me for 5 hours, and told to get out." At part #24, where applicants are asked if they have traveled to the United States before, the applicant indicated that she had not traveled to the United States before her entry in January 1990. At part #26, where applicants are asked to indicate their date of departure from their country of nationality, the applicant indicated that she left Nigeria on January 26, 1990.

The applicant submitted a Form G-325A, Biographic Information, in conjunction with her asylum application. The applicant indicated on the Form G-325A that she resided in Lagos, Nigeria from January 1939 to January 1990. She further indicated that she had resided at "[REDACTED], New York, New York" since January 1990.

On April 22, 2006, the district director issued a notice informing the applicant of her intent to deny the application because the applicant had not submitted any evidence to corroborate her claim of continuous residence in the United States during the requisite period. The district director noted in the notice of intent to deny that the applicant indicated on her Form G-325A that she resided in her country of nationality, Nigeria, from January 1939 until January 1990, at which time she left Nigeria and traveled to the United States. The applicant failed to respond to the notice by submitting any evidence to corroborate her claim.

The district director, therefore, denied the application on June 10, 2006, because the applicant failed to establish continuous residence in the United States in an unlawful status during the requisite period.

On appeal the applicant asserts that her first entry into the United States with a nonimmigrant visa was in 1990, but claims that she had previously entered the United States without inspection in 1981. The applicant asserts that there is no contradiction in her claimed dates of entry into the United States.

The applicant's assertion is incorrect. She indicated on her asylum application, which she signed attesting under penalty of perjury that the information provided on the application was true and complete to the best of her knowledge, that she had not entered the United States prior to her entry on January 26, 1990. Furthermore, she indicated on the Form G-325A that she resided in Nigeria from her birth in 1939 to her departure from Nigeria for the United States in January 1990. This contradiction in her claimed date of entry into the United States raises serious questions of credibility regarding her claim.

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. Further, it is incumbent on the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

The applicant, on appeal, submits an affidavit dated May 9, 2006, from [REDACTED], a resident of New York, New York. Mr. [REDACTED] states that he first met the applicant in 1981 at the corner of [REDACTED] New York, New York, where they were both selling merchandise. However, Mr. [REDACTED] provided no information regarding the applicant's address in the United States or the frequency of his contact with the applicant during the requisite period. Therefore, this affidavit will be accorded little evidentiary weight.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period, and has submitted only one attestation that lacks sufficient detailed and verifiable information to corroborate her claim.

The absence of sufficiently detailed 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 contradictory statements on her applications and her reliance on a document 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.