



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



LI

FILE: [REDACTED]  
MSC-05-272-10080

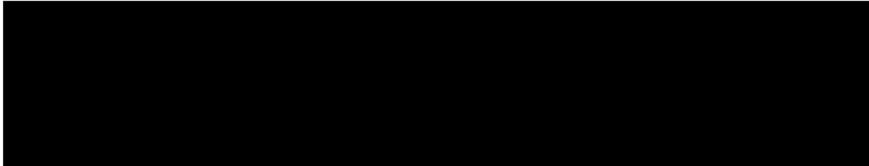
Office: NEWARK

Date: JUN 13 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, Newark, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director concluded that the applicant failed to prove that she entered the United States before January 1, 1982 and continuously resided in the United States since before January 1, 1982 through April 4, 1988, and thus, denied the application. The director adjudicated the application pursuant to the Legal Immigration Family Equity (LIFE) Act Legalization provisions under 8 C.F.R. § 245a.15. The director's application of the regulations under the LIFE Act Legalization provisions was in error; nonetheless, the AAO affirms the director's decision. The applicant filed an I-687, Application for Status as Temporary Resident, pursuant to the CSS/Newman Settlement Agreements. Therefore, the issue in this proceeding is whether the applicant has demonstrated that she continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that she attempted to file a Form I-687, Application for Status as a Temporary Resident, with the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS) in the original legalization application period of May 5, 1987 to May 4, 1988.

On appeal, counsel for the applicant asserts that the applicant has demonstrated by a preponderance of the evidence that she has resided in an unlawful status in the United States from June 1981 until late 1982, and then she reentered the United States in 1983.

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 Immigration and Nationality Act (Act), 8 U.S.C. § 1255a(a)(2).

An applicant applying for adjustment to temporary resident status must 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).

For purposes of establishing residence and presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the alien attempted to file a completed Form I-687 application and fee or was caused not to timely file, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

An alien applying for adjustment of status 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.

An applicant for temporary resident status must establish that he has not been convicted of any felony or of three or more misdemeanors committed in the United States. Section 245A(a)(4) of the Act, 8 U.S.C. § 1255a(a)(4). "Felony" means a crime committed in the United States punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except when the offense is defined by the state as a misdemeanor, and the sentence actually imposed is one year or less, regardless of the term such alien actually served. Under this exception, for purposes of 8 C.F.R. Part 245a, the crime shall be treated as a misdemeanor. 8 C.F.R. § 245a.1(p). "Misdemeanor" means a crime committed in the United States, either (1) punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or (2) a crime treated as a misdemeanor under 8 C.F.R. § 245a.1(p). For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor. 8 C.F.R. § 245a.1(o).

An FBI report based upon the applicant's fingerprints reveals that on November 10, 1989, the applicant was arrested by the New York Police Department (Agency Case [REDACTED]). The applicant has submitted a letter from the Queens County, New York, District Attorney's Office, which provides, "no arrest record found on 11-10-89 or arrest [REDACTED] this [sic] case was dismissed before arraignment." The FBI report also reveals that the applicant was arrested on December 4, 1990 by the United States Secret Service, Brooklyn, for credit card fraud. The applicant has submitted a court disposition from the U.S. District Court, Eastern District of New York, which provides that the charge against the applicant was terminated on May 7, 1991. The FBI report also indicates that the charge for credit card fraud was dismissed on this date.

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.

The record shows that the applicant filed a Form I-687, Application for Status as a Temporary Resident, and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, with CIS on June 7, 2005. The applicant signed this application under penalty of perjury certifying that the information contained in the application is true and correct. Part 30 of this application requests the applicant to list her residences in the United States since her first entry. The applicant responded that she resided at [REDACTED] Brooklyn, New York from July 1981 until September 1983. However, this information is inconsistent with documentation contained in the applicant's record. The applicant's record contains her Form G-325A, Biographic Information, signed by the applicant on September 14, 1987. This form was submitted to accompany a Form I-130, Petition for Alien Relative, filed on her behalf. The applicant stated on her Form G-325A that she resided at [REDACTED], Lagos, Nigeria from *January 1966 until July 1983*. Moreover, the applicant submitted with her application a copy of her previous passport, which indicates that it was issued on August 10, 1982 in Lagos, Nigeria. The passport contains a United States visitor visa, issued by the United States Consulate in Lagos, Nigeria, on December 15, 1982. The applicant has an entry stamp in her passport, which indicates that she entered the United States at New York, New York, on July 29, 1983. The applicant's entry date of July 29, 1983 corroborates the information provided on her Form G-325A. The inconsistency between the applicant's Form G-325A and her Form I-687 detracts from the credibility of her claimed residence in the United States since July 1981.

The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of evidence to establish proof of residence in the United States during the requisite period. Examples of documentation that can be submitted include: past employment records; utility bills; hospital or medical records; attestations by churches, unions or other organizations; deeds, mortgages, contracts to which the applicant has been a party; and letters or correspondence between the applicant and another person or organization. An applicant may also provide "any other relevant document" as proof of her residence. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The applicant submitted a copy of an aerogramme she received from Nigeria as evidence of her purported residence in the United States. The aerogramme contains two postmarks; the postmark at the top middle of the aerogramme is dated December 27, 1981. However, the postmark that overlaps with the postage stamp is dated December 27, 1988. This inconsistency draws into question whether the applicant has altered this document in an attempt to establish her residence in the United States during the requisite period. The internal inconsistency contained in this document undermines its credibility, therefore, it cannot be afforded any weight.

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. The noted inconsistencies found in the applicant's record seriously detract from the overall credibility of her claimed 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 has submitted several letters from her family and friends, in an attempt to establish her residence in the United States during the requisite period. The applicant submitted a notarized letter from her sister, [REDACTED]; a notarized letter from her friend, [REDACTED]; a notarized letter from her brother, [REDACTED]; and a notarized letter from [REDACTED].

The letter from [REDACTED] can only be afforded minimal weight because it is vague and lacks detail. This letter provides, "I [REDACTED], a citizen of United States of America certify that I have known the above named person since December 1981." This letter contains several apparent deficiencies. The letter does not contain an identity document to verify [REDACTED] credibility. Additionally, the letter fails to provide the applicant's address during the requisite period. Finally, the letter fails to explain the extent of the [REDACTED] contact with the applicant during the requisite period.

The letters from [REDACTED] and [REDACTED] contain additional details regarding the applicant's residence in the United States during the requisite period. These letters attempt to explain the aforementioned July 29, 1983 entry date in the applicant's passport. The applicant's sister, [REDACTED], provides, "[i]n July of 1982, [REDACTED] left for Nigeria with a traveling certificate to go and obtain the proper document, a passport to return to the United State. [sic] [REDACTED] returned to the U.S. in July of 1983 . . ." Similarly, the applicant's friend, [REDACTED] provides, "July 1982, when bunmi [sic] was given admission at S.U.N.Y college of old westbury [sic], she decided to return to Nigeria to obtain the proper document . . . [REDACTED] returned back to the United State [sic] in July of 1983 . . ." Additionally, the letter from the applicant's brother, [REDACTED] provides, "[s]he stayed with me at the above address from the period of June, 1981 [sic] to July, 1982 [sic]. She left and returned on July 1983." Finally, the applicant's own notarized statement attempts to explain the July 29, 1983 entry date indicated on her passport. The applicant's statement provides, "I left back to Nigeria in July 1982 on a travel certificate issued to me by the

Nigerian consulate in New York. I re-entered New York in July 1983 as a B-2 tourist with a Nigerian passport . . .”

If credible, these statements have raised another issue regarding the applicant's eligibility for temporary resident status. An applicant for temporary residence 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). An alien shall be regarded as having resided continuously in the United States if at the time of filing an application for temporary resident status, 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, through the date the application is filed, unless the alien can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the alien was maintaining residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.1(c). 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."

The applicant claims that she was absent from the United States from July 1982 until July 1983. This time period is clearly in excess of the forty-five (45) day period allotted under 8 C.F.R. § 245a.1(c). The applicant's written statement provides the following explanation for her absence from the United States:

In February of 1982, I applied to the College at Old Westbury of the State University of New York. My twin sister and I were both admitted in the summer and scheduled to resume in the fall of 1982. However, for financial reasons and due to the fact that I had to [sic] proper identification papers on me; namely state I.D. card or traveling passport, I left back to Nigeria in July 1982 on a travel certificate issued to me by the Nigerian consulate in New York.

Additionally, the letter from the applicant's sister, [REDACTED], provides, "we could not start school because [REDACTED] pocketbook was snatched from her in downtown Brooklyn. Inside was her passport, address book and some other personal documents. In July of 1982, [REDACTED] left for Nigeria with a traveling certificate to go and obtain the proper document, a passport to return to the United State [sic]." It should be noted that the reason the applicant could not obtain a replacement passport from the Nigerian Consulate instead of a Nigerian travel certificate is unclear.

We must determine whether the applicant's one-year absence was because of an "emergent reason." See *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988). Although this term is not defined in the regulations, *Matter of C-* defines emergent as "coming unexpectedly into being." 19 I&N Dec. 808 (Comm. 1988). The applicant's passport was issued on August 10, 1982. The applicant's passport indicates that her visa application was received by the United States

Consulate in Lagos on December 13, 1982. The applicant's B-2 visa was issued on December 15, 1982. The applicant was issued a multiple entry visa, valid until December 14, 1986. The applicant used this visa to enter the United States seven months later on July 29, 1983. In the absence of clear evidence that the applicant intended to return within 45 days, it cannot be concluded that an emergent reason "which came suddenly into being" delayed the applicant's return to the United States beyond the 45-day period. Therefore, it cannot be concluded that she resided continuously in the United States for the requisite period.

An alien applying for adjustment of status has the burden of proving by a preponderance of the evidence that she has *continuously* resided in an unlawful status in the United States from prior to January 1, 1982 through the date of filing, is admissible to the United States under the provisions of section 245A of the Act, 8 U.S.C. § 1255a, and is otherwise eligible for adjustment of status. 8 C.F.R. § 245a.2(d)(5). Due to the applicant's one-year absence, she did not continuously reside in the United States for the requisite period. For this additional reason, the application may not be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act.

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