

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

41

[REDACTED]

FILE: [REDACTED]  
MSC 06 088 17765

Office: NEW YORK

Date: APR 02 2008

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:

[REDACTED]

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. Wienmann, 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, and 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. 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. Based on the applicant's prior statement and information provided on other applications, the director determined that the applicant's claim lacks credibility. Accordingly, the director denied the application, finding that 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 addresses the director's findings, maintaining that she is eligible for temporary resident status.

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). 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).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and 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 alien 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 period, 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, 431 (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 during the requisite time period. Here, the applicant has not met this burden. The record shows that the applicant did not provide any evidence to support her application at the time of filing. Accordingly, the director issued the first of two notices of intent to deny (NOID).

In the first NOID, dated January 31, 2006, the applicant was notified that the record lacked sufficient evidence to support her claim. In response, the applicant provided her own personal statement dated February 21, 2006 in which she maintained her eligibility for temporary resident status. The applicant also provided two nearly identical affidavits, one affidavit from [REDACTED] dated February 19, 2006 and the other affidavit from [REDACTED] dated February 18, 2006. Both affiants provided the applicant's claimed residential address during the relevant time period. While both affiants also claimed that they met the applicant in 1981 "in Temple," neither affiant provided the name of the temple; nor is there any explanation as to why both affiants specifically claimed that their respective acquaintance with the applicant was from 1981 to 1987. In other words, neither affiant explained why the claimed acquaintance with the applicant did not go beyond 1987, keeping in mind that the relevant statutory period lasted until May 4, 1988.<sup>1</sup> Additionally, the AAO notes that the photocopied naturalization certificate belonging to [REDACTED] shows that this affiant was only ten years old in 1981, the year that his first acquaintance with the applicant purportedly took place.

On June 12, 2006, the director issued the second NOID informing the applicant of additional adverse findings. First, the director acknowledged the applicant's response to the first NOID and determined that

---

<sup>1</sup> It is noted that the beneficiary only claimed to have attempted to apply for legalization sometime between May 1987 and May 1988. Given the uncertainty of when the applicant attempted to file, May 4, 1988 must be considered as the end of the relevant statutory period in this matter.

this documentation was insufficient to overcome the prior adverse finding. Second, the director discussed various information provided by the applicant at an interview that took place on June 7, 2006. More specifically, the director addressed the applicant's admission, to which she attested in the presence of a translator as well as her attorney, that she first entered the United States in February 1994 by using someone else's passport.

In response, the applicant submitted her own written statement dated July 8, 2006 in which she unequivocally stated that she never meant to claim that her first entry was in 1994, but rather that her latest entry was in 1994. However, the AAO questions the veracity of this explanation, as the damaging statement was made by the applicant voluntarily and in the presence of both a translator and the applicant's legal counsel. While the applicant maintained her original claim and resubmitted the affidavits provided in response to the first NOID, the director determined that the applicant failed to overcome the adverse findings cited in both NOIDs.

Subsequent to further review of the applicant's record, the director determined that the applicant failed to establish eligibility for temporary resident status and, therefore, issued a notice of denial dated September 23, 2006. The director noted a number of unexplained anomalies regarding the applicant's claimed absences and questioned her ability to fund her claimed trips abroad given her lack of finances. The director also pointed to the applicant's admission, which she made in the presence of her own counsel as well as a translator, claiming that she first entered the United States in 1994. The director found that this admission negates the validity of the applicant's current claim, which requires continuous residence in the United States as of January 1, 1982.

On appeal, the applicant provides a brief statement explaining that her entries into the United States during the statutory period were completed without inspection and that she therefore does not have proof of her departures or her entries. With regard to the funding of her alleged trips abroad, the applicant states that her employer assumed the expenses of her trips. However, the applicant provided no evidence to support her claim, which the AAO finds to be lacking in credibility, particularly in light of the applicant's response to No. 33 of her Form I-687 where, rather than identifying a specific employer during the qualifying period, the applicant merely indicated that she performed "odd jobs." The AAO notes that going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

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 attestations from only two people, one of whom was only ten years old at the time he purportedly first met the applicant. Regardless, neither affiant's testimony offered any detailed information about the events and circumstances of the applicant's life during the relevant time period. As such, these statements, at best, can be afforded minimal weight as evidence to support the applicant's 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 statement and her 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-*, 20 I&N Dec. 77. 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.