

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

4

[REDACTED]

FILE: [REDACTED] Office: NEW YORK Date: **APR 24 2008**  
MSC-06-007-11217

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:

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.

A handwritten signature in black ink, appearing to read "D. Long" or similar, written over a horizontal line.

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. 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. The director determined that the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status for the duration of the requisite period. The director denied the application, finding that the applicant had not met his burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

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).

For purposes of establishing residence and physical presence under the CSS/Newman Settlement Agreements, the term “until the date of filing” in 8 C.F.R. § 245a.2(b)(1) means until the date the applicant 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.* at 80. 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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet her burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to Citizenship and Immigration Services (CIS) on October 7, 2005. The applicant signed this form under penalty of perjury, certifying that the information she provided is true and correct. 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 indicated two addresses in the United States. Her first address, [REDACTED] New York, New York, from May 1981 until March 1989; and her second address, [REDACTED] New York, New York from April 1989 until the present. No other addresses were listed.

On the Form I-687 Supplement, CSS/Newman Class Membership Worksheet, the applicant indicated that she entered the United States before January 1, 1982 but provided no evidence of such entry.

In support of her initial I-687 application, the applicant submitted a copy of her B1/B2 Visa, issued on December 20, 1983; a copy of her Nigerian passport, issued on December 21, 1983; and a copy of an I-94 Entry/Departure Record, with an entry stamp from December 21, 1983. 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 acknowledged that the applicant submitted the visa, passport and I-94 Record but noted that these documents merely provide evidence of the applicant’s identity and entrance to the United States in 1983, however, they do not provide evidence that she initially entered the United States prior to January 1, 1982 or that she resided in the United States continuously through the statutory period. Thus, 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 submitted a personal statement indicating that she “entered the US in January 1981 . . . through New York with my Nigerian passport . . . I was 15 years old. I came with my older sister [REDACTED] and she kept my passport and other important documents.” The applicant further explains that her sister passed away in 1987 and she has tried to find her passport but has been unsuccessful.” She then states that upon arriving in the United States she was reunited with her cousin, [REDACTED], in Chicago, in May 1981.

In support of her appeal, applicant submits a notarized letter from her cousin dated September 10, 2006. [REDACTED] the applicant’s cousin, identifies herself as a U.S. citizen and indicates that the applicant has been living in the United States since 1981. She indicates that the applicant resided with her in Chicago from May 1981 until February 1982 when applicant moved to Providence, Rhode Island. This evidence conflicts with the applicant’s I-687 application where she states that she lived at [REDACTED], New York, New York, from May 1981 until March 1989. The applicant did not mention living in either Chicago or Rhode Island as [REDACTED] claims.

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. The applicant has not provided any explanation regarding the inconsistent information provided on her I-687 legalization application and the submitted letter.

Further [REDACTED] did not indicate how frequently or under what circumstances she saw the applicant after February 1982 or any other details regarding the events and circumstances of the applicant's residence in the United States that would tend to lend probative value to her statement. She did not specifically state that she has direct, personal knowledge that the applicant continuously resided in the United States during the entire requisite period. For these reasons, this letter can be given only minimal weight as corroborating evidence.

As discussed above, the letter directly conflicts with the applicant’s I-687 application and is significantly lacking in detail. It does not establish that the individual actually had personal knowledge of the events and circumstances of the applicant's residence in the United States.

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).

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 a letter 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.