

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Massachusetts Ave., NW, RM 3000
Washington, D.C. 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

41

FILE:

MSC-05-046-11875

Office: FAIRFAX

Date:

DEC 12 2008

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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.


John F. Grisson, Acting 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 Director, Fairfax. 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 denied the application, finding 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.

On appeal, counsel for the applicant asserts that the director failed to consider all of the evidence submitted by the applicant in support of her application.

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).

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) 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 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant’s own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

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. See 8 C.F.R. § 245a.2(d)(6). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

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 established that she (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. The documentation that the applicant submits in support of her claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of an affidavit from the applicant and affidavits and letters from her friends and family; a letter from her church; one original envelope with a 1986 post-mark date and an employment letter. Some of the evidence submitted indicates that the applicant resided in the United States after May 4, 1988; however, because evidence of residence after May 4, 1988 is not probative of residence during the requisite time period, it shall not be discussed. The AAO has reviewed each document in its entirety to determine the applicant's eligibility; however, the AAO will not quote each witness statement in this decision.

The record contains affidavits from [REDACTED], the applicant's uncle, [REDACTED], [REDACTED] who the record indicates married the applicant in 1991, [REDACTED] and [REDACTED] who is the applicant's cousin.

Affiant [REDACTED], who submitted his affidavit from Ghana, states that the applicant is his niece and asserts that she resided in New York from 1981 to 1989. He also states that the applicant

used his girlfriend's documents, those of [REDACTED] to obtain work with Met Life as an insurance file clerk.

Affiant [REDACTED] states that he is friends with the applicant and asserts that the applicant resided in New York in 1981 and that she worked part-time as a file clerk with Metropolitan Insurance but that she used the name [REDACTED] at that time.

Declarant [REDACTED] states that he resides in Bowie, Maryland and that he has known the applicant since 1986 when she resided in New York. However, the declarant does not state the circumstances under which he first met the applicant or indicate the frequency with which he saw the applicant from 1986 until the end of the requisite period.

Affiant [REDACTED] submits two affidavits,¹ in which he collectively states that the applicant is his relative and that she has resided in the United States since September 20, 1981. He also states that the applicant has resided with him since January of 1991. However, he fails to state how he was able to determine the date that he knows the applicant began to reside in the United States. He further fails to state the frequency with which he saw the applicant during the requisite period or indicate whether there were periods of time during the requisite period when he did not see the applicant.

Affiant [REDACTED] states that the applicant is his cousin and that she resided with him since September 20, 1981. He states that the applicant resided in the Bronx, New York from September 1981 until November 1989. He states that the longest period for which he has not seen the applicant is one month. However, the affiant does not state the circumstances under which the applicant began to reside with him in the United States or provide any details regarding the applicant's residence with him in the United States during the requisite period.

Although the affiants state that they have known the applicant since before January 1, 1982, their statements do not supply enough details to lend credibility to their claimed relationships with the applicant. For instance, the affiants do not indicate how they date their initial meeting with the applicant, how frequently they had contact with the applicant, or how they had personal knowledge of the applicant's presence in the United States. Further, the affiants do not provide information regarding where the applicant lived during the requisite period. Given these deficiencies, these affidavits have minimal probative value in supporting the applicant's claims that she entered the United States prior to January 1, 1982 and resided in the United States for the entire requisite period.

The employment letter³ submitted by the applicant's alleged former employer is also of little value because it does not conform to the specifications that the regulations state employment letters must adhere to.

¹ Both affidavits are notarized on April 9, 1991.

² This affidavit was notarized on November 30, 1989.

³ This letter is dated March 25, 1991.

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states, in pertinent part: that letters from employers should be on the employer letterhead stationary, if the employer has such stationary and must include the following: an applicant's address at the time of employment; the exact period of employment; periods of layoff; duties with the company; whether or not the information was taken from the official company records; and where records are located and whether the Service may have access to the records. The regulation further provides that if such records are unavailable, an affidavit form-letter stating that the alien's employment records are unavailable and noting why such records are unavailable may be accepted in lieu of statements regarding whether the information was taken from the official company records and an explanation of where the records are located and whether USCIS may have access to those records. This affidavit form-letter shall be signed, attested to by the employer under penalty of perjury, and shall state the employer's willingness to come forward and give testimony if requested.

In this case, [REDACTED] who indicates he is a manager with Metropolitan Life, states that the applicant worked with Metropolitan Life from October 16, 1981 until November 23, 1989 in their office in New York and that she was a file clerk. However, [REDACTED] does not state whether he consulted the company's records or how he was otherwise able to determine the applicant's period of employment with the company. He further does not mention how he was able to verify the applicant's employment with the company as [REDACTED], the name that the applicant asserts she used when she worked for Metropolitan Life, or whether the applicant worked full or part time with the company. Because this employment letter is lacking with regards to the regulatory requirements as noted above, it can only be accorded minimal weight as evidence of the applicant's residence in the United States during the requisite period.

The record of proceeding also contains a letter from the New Hope Revival Church, Inc. in Brooklyn New York, in which [REDACTED] asserts that the applicant has attended services and been a member of the church since October 1981.⁴ The regulation at 8 C.F.R. § 245a.2(d)(3)(v) provides requirements for attestations made on behalf of an applicant by churches, unions, or other organizations. Attestations must: (1) Identify applicant by name; (2) be signed by an official (whose title is shown); (3) show inclusive dates of membership; (4) state the address where applicant resided during membership period; (5) include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; (6) establish how the author knows the applicant; and (7) establish the origin of the information being attested to.

This letter from the New Hope Revival Church does not comply with the above cited regulation because it does not: state the address where the applicant resided during her membership period; establish in detail that the author knows the applicant and has personal knowledge of the applicant's whereabouts during the requisite period; establish the origin of the information being attested to; and indicate that membership records were referenced or otherwise specifically state the origin of the information being attested to. It is also noted that on the applicant's Form I-687 submitted pursuant to the CSS/Newman Settlement Agreements, she did not indicate that she had ever been a member of any churches or organizations. Because this letter is lacking with regards to the regulatory requirements as noted above, it is not deemed probative and is of little evidentiary value.

⁴ This letter is dated May 28, 1990.

The record also contains an original envelope addressed to the applicant in New York. This envelope bears a postmark date of June 35, 1986. It is noted that this is not a valid date.

The remaining evidence in the record is comprised of the applicant's statements and application forms, in which she claims to have entered the United States in October 1981, the applicant's New York identification card, employment authorization card, and passport. The applicant has not submitted any additional evidence in support of her claim that she was physically present or had continuous residence in the United States during the entire requisite period or that she entered the United States in 1981. The New York identification card, employment authorization card, and passport are evidence of the applicant's identity, but do not demonstrate that she entered before January 1, 1982 and resided in the United States for the requisite period.

Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that she is eligible for the benefit sought.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and continuously resided in an unlawful status in the United States for the requisite period 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.