

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

L1



FILE:



Office: NATIONAL BENEFITS CENTER

Date: FEB 21 2008

MSC-06-068-13859

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:

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. King" or similar, written over a faint circular stamp.

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 Director, National Benefits Center. 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 she 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 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 asserts her eligibility for temporary resident status pursuant to 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 his or 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 supplement to Citizenship and Immigration Services (CIS) on December 7, 2005. The applicant signed this application under penalty of perjury, certifying that the information she provided is true and correct. At part #30 of the application where applicants are asked to list all residences in the United States since first entry, the applicant showed her first address in the United States to be in New York, New York from June 1980 until June 1988. At part #32 of the application where applicants are asked to list all absences from the United States since entry, the applicant reported that she first traveled to Canada with her family in November 1986 for one month. The applicant reported that she then traveled to Uganda with her family in June 1988 and remained there until February 2000. Although this application indicates that the applicant has resided in the United States during the requisite period, the applicant has not corroborated her claim with credible, reliable and probative evidence.

The applicant failed to file with her application any evidence to corroborate her claim of continuous residence in the United States during the requisite period. On January 11, 2006, the director issued a Notice of Intent to Deny (NOID) to the applicant. The NOID provides that the applicant failed to submit documentation to establish her eligibility for Temporary Resident

Status. The applicant was afforded thirty (30) days to provide additional evidence in response to the NOID. The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documentation that may be provided to establish proof of continuous residence in the United States during the requisite period. This list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts, or letters. The applicant failed to provide any of these documents in support of her claim of continuous residence in the United States.

An applicant may also submit “any other relevant document.” 8 C.F.R. § 245a.2(d)(3)(vi)(L). The applicant responded to the NOID with her rebuttal that provides:

I do not have any of the proof you’re asking me to enclose in the application when I file it in December 07, 2006 because I was brought here by my parents. All the proof of my residency in the USA at that time is with them. Since I came back into this country I have not been back home[.] I do not have any of it. I am going to apply for the travel document for the intent to go back to my country to try to find those documents. For now all I have is what I have written in my application.

The director denied the application for temporary residence on June 19, 2006. In denying the application the director noted that the applicant failed to submit any documentation in support of her claim other than her own letter. The director determined that the applicant failed to provide sufficient evidence to establish her claim. The director concluded that the applicant had failed to meet her burden of proof in the proceeding.

On appeal, the applicant submits another letter from herself, which provides that she was young when she came to the United States illegally in the 1980s. She claims that her parents informed her that she resided in the Bryant Hotel during their residence in the United States. The applicant further claims that her parents unsuccessfully attempted to apply for legalization in July 1987. The applicant asserts that proof alone should not be a ground to dismiss her application.

An applicant for temporary resident status has the burden of proving by a preponderance of the evidence that she has resided in the United States for the requisite periods. *See* 8 C.F.R. § 245a.2(d)(5). The application of the “preponderance of the evidence” standard may require an examination of each piece of relevant evidence and a determination as to whether such evidence, either by itself or when viewed within the totality of the evidence, establishes that something to be proved is probably true. *Matter of E-M-*, 20 I&N Dec. 77, 80 (Comm. 1989). On appeal, the applicant asserts that proof alone should not be a ground to dismiss her application. However, the regulations require that for an applicant to meet her burden of proof she must provide evidence of eligibility apart from her own testimony. 8 C.F.R. § 245a.2(d)(6). Hence, the applicant’s Form I-687 and written statements cannot alone be sufficient evidence to establish

eligibility. *See Matter of E-M-*, 20 I&N Dec. 77, 80. Pursuant to 8 § C.F.R.245a.2(d)(3), the applicant has been given the opportunity to submit a broad range of documents to corroborate her testimony. Nevertheless, the applicant has failed to provide any objective evidence of her residence in the United States.

The applicant indicated on her Form I-687 application that her date of birth is January 31, 1973. The applicant was seven years old when she first entered the United States and she remained in the United States until she was fifteen years old. The applicant's statement on appeal provides that, "[my parents] told me that they were very depressed because of the long hours they were putting in to try to gave [sic] me a better education . . . By the time we left the USA I was a teenager and know [sic] a lot about this country." The applicant's statement indicates that she received an education in the United States. However, the applicant failed to provide any school records to corroborate her claim of continuous residence in the United States during the requisite period. Moreover, the applicant failed to provide any affidavits, letters or declarations from persons who had knowledge of her residence in the United States during the requisite period. The applicant's failure to provide any evidence to establish her continuous residence in the United States during the requisite period renders a finding that she has failed to satisfy her burden of proof, as delineated in 8 C.F.R. § 245a.2(d)(5). The applicant has not submitted sufficient evidence to establish that her claim is "probably true" pursuant to *Matter of E-M-*, *supra*.

Moreover, the record contains information that is inconsistent with the applicant's assertion that she has continuously resided in the United States during the requisite period. On March 24, 2000, the applicant filed a Form I-589, Application for Asylum. The applicant signed this application under penalty of perjury certifying that the application is true and correct. The applicant provided on part #18 of this application that she has made one entry into the United States. The applicant stated that she entered the United States on February 26, 2000 as a B2 visitor. The applicant indicated that she has not previously entered the United States. Additionally, the applicant provided on part #27 of this application that she attended primary school in Entebbe, Uganda from 1979 until 1986 and secondary school in Kampala, Uganda from 1987 until 1990. These assertions are materially inconsistent with the applicant's claim of continuous residence in the United States from June 1980 until June 1988.

The inconsistencies found in the applicant's record seriously undermine the credibility of her claim of residence in the United States for the requisite period. 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 (BIA 1988). As noted, the applicant in this proceeding has failed to submit any independent objective evidence of her residence in the United States.

In conclusion, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, as well as the

inconsistencies and contradictions noted in the record, seriously detract from the credibility of her 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 inconsistencies in the record and the lack of credible supporting documentation, it is concluded that the applicant has failed to establish by a preponderance of the evidence that she has 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.