

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

L1

[REDACTED]

FILE:

[REDACTED]

Office: NEW YORK

Date: JUL 08 2008

MSC-05-127-11032

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. 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.

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 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, through counsel, asserts that the director failed to consider the two affidavits she submitted as corroborating evidence of her residence in the United States.

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 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 Supplement to Citizenship and Immigration Services on February 4, 2005. At part #30 of the Form I-687 application where applicants are asked to list all residences in the United States since first entry, the applicant showed that during the requisite period she resided at [REDACTED] New York, New York from 1981 until 1986 and [REDACTED], New York, New York from 1986 until 1989. At part #33, the applicant showed that she has been self-employed in New York, New York in the occupation of hair braiding since 1983. Part #33 of the application requests applicants to provide their annual or hourly wage and their employment address. The applicant left this part of the application blank. The applicant’s failure to fully complete the application draws into question her claim of residence in the United States during the requisite period.

The applicant submitted the following documentation:

- A fill-in-the-blank affidavit from [REDACTED], dated July 12, 2005, which provides that she has personally known and been acquainted with the applicant in the United States since 1981. The affidavit states that [REDACTED] is able to determine the date of the beginning of

her acquaintance with the applicant because they used to live in the same building from 1981 until 1986. This affidavit is vague because it fails to detail [REDACTED]'s relationship with the applicant during the requisite period. There is no information on the type and frequency of contact they maintained during this period. Given this deficiency, this affidavit is of little probative value as evidence of the applicant's continuous residence in the United States during the requisite period.

- A fill-in-the-blank affidavit from [REDACTED], dated July 12, 2005, which provides that she has personally known and been acquainted with the applicant in the United States since 1982. The affidavit states that [REDACTED] is able to determine the date of the beginning of her acquaintance with the applicant because the applicant was a babysitter to her children when she went to school from 1982 until 1985. This affidavit is vague because it fails to provide any details on the applicant's position as a child care provider for [REDACTED]'s children. It should be noted that the applicant neglected to include her position as a child care provider on part #33 her Form I-687 application. Given these deficiencies, this affidavit is of little probative value as evidence of the applicant's residence in the United States during the requisite period.

On August 10, 2005, the director issued a Notice of Intent to Deny (NOID) to the applicant. The director determined that the applicant failed to provide any evidence of her residence and presence in the United States during the requisite period. The director afforded the applicant a period of 30 days to over come this basis for denial.

Pursuant to 8 C.F.R. § 245a.2(d)(6), to meet her burden of proof, an applicant must provide evidence of eligibility apart from her own testimony. The regulations at 8 C.F.R. § 245a.2(d)(3) provide an illustrative list of contemporaneous documentation that may be furnished 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. An applicant may also submit "any other relevant document." 8 C.F.R. § 245a.2(d)(3)(vi)(L).

On January 5, 2006, the director issued a notice of decision to deny. In denying the application the director found that the applicant failed to submit additional evidence for consideration. The director determined that the applicant failed to overcome the basis for the NOID. The director concluded that the applicant failed to meet her burden of proof in the proceeding.

On appeal, the applicant, through counsel, asserts that although the NOID indicates she submitted no evidence to show her physical presence in the United States from 1981 to 1986, she in fact submitted affidavits from two United States citizens stating that they interacted with her during this period.

The director's failure to consider the affidavits from [REDACTED] and [REDACTED] must be considered to be harmless error as the AAO conducts a de novo review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(d)(6). A review of the affidavits from [REDACTED] and [REDACTED] reveals that they are of little probative value. Therefore, they do not sufficiently establish by a preponderance of the evidence that the applicant has continuously resided in the United States for the requisite period.

It should be noted that counsel indicated on the appeal notice that he would submit a brief within 30 calendar days. However, counsel failed to submit a brief to the AAO within this time period. On June 10, 2008, the AAO sent a notice to counsel requesting a copy of his brief and/or any additional evidence. As of the date of this decision, counsel has not responded to this request.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts 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 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.