



U.S. Citizenship  
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Services

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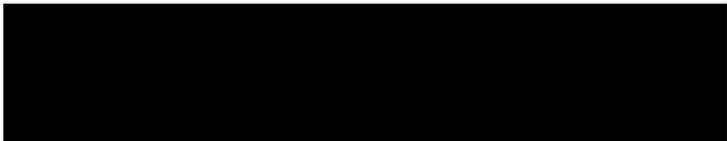
Office: NEW JERSEY Date: JUN 02 2008

IN RE: Applicant:



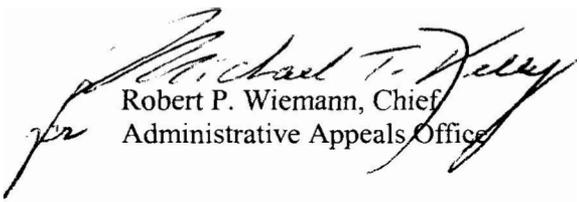
APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the National Benefits Center. If your appeal was sustained, or if the matter 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. 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 Jersey. 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 that she has established her unlawful residence for the requisite time period, that she is qualified under Section 245A of the Act and the CSS/NEWMAN settlement agreements, and that her application for temporary resident status should be granted.

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 245(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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that she resided in the United States for the duration of the requisite period. Here, the applicant submitted her unsworn statement, and sworn affidavits from the following individuals: [REDACTED] (2 affidavits); [REDACTED]; and [REDACTED]. For the reasons hereinafter discussed, that evidence is not deemed to be probative or credible. The applicant has failed to meet her burden of proof.

#### Affidavits

- [REDACTED]  
[REDACTED] submitted a sworn statement indicating that she resides in New York. She provided her address, telephone number and a copy of her New York State drivers license. The affiant states that she has known the applicant since 1981, that she was introduced to the applicant by a friend, and that the applicant was “taking care [of] my mother Lucy Constable at [REDACTED], Farmingdale, NY 11735.”
- [REDACTED]  
[REDACTED] submitted two sworn statements. The affiant is a permanent resident of the United States. He provided his address, telephone number, and copy of his driver’s license. The substance of the two affidavits submitted are similar in nature. The affiant states that he has known the applicant since 1980, that he is the applicant’s friend, that the two work

together, and that he has discussed her legalizations issues with her frequently. The affiant lists five separate addresses where the applicant has lived in the United States.

- [REDACTED]

The affiant states that he is a United States citizen and provides his address and telephone number. He states that he is a family member of the applicant's, that she first came to the United States around July 10, 1979 traveling through Canada and entering the United States without inspection. The affiant states that the applicant lived in the United States illegally from January 1, 1982 until May 4, 1988 "when the amnesty expired," and that the applicant was prevented from applying for amnesty by immigration officials because she had left the country briefly without advance parole in December of 1986.

- [REDACTED]

The affiant provides her address but no other identifying documentation. She states that she has known the applicant since 1980, that the applicant was born in Sri Lanka, and that the applicant attempted to legalize through the amnesty program. The applicant lists five addresses where the applicant has resided while in the United States, and states that she is aware of this information because she and the applicant are friends who work together, and they discuss these matters frequently.

#### Applicant's Statement

- The applicant provided an unsworn statement indicating that she first came to the United States around July 10, 1979, entering the country from Canada without inspection. The applicant states that she resided in the United States illegally from January 1, 1982 through May 4, 1988 when the amnesty expired, leaving the country briefly on December 31, 1986 and returning on January 21, 1987. The applicant states that she was prevented from applying for amnesty by immigration officials because she left the country for this brief period without advance parole

Although the applicant has submitted several affidavits and her unsworn statement in support of her application, the applicant has not provided any contemporaneous evidence of residence in the United States during the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. Although not required, neither the applicant's statement nor any of the affidavits included any supporting documentation of the affiant's presence in the United States during the requisite period. For example, such documentation could include, but is not limited to, copies of: medical records; school records; real estate/lease documentation; telephone bills; dated purchase receipts; and bank statements. The affidavits do not provide sufficient detail of the affiant's relationship with the applicant to establish her physical presence in this country in an unlawful status during the requisite time frame. 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 her claim. Pursuant to 8 C.F.R. § 245a.12(e), 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 documents with minimal probative value, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States during the requisite period.

Therefore, based on the above, 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.