



U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

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FILE: [REDACTED]  
MSC-05-231-13622

Office: NEW YORK

Date: JUN 12 2008

IN RE: Applicant: [REDACTED]

PETITION: 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. All documents have been returned to the office that originally decided your case. 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 York, and that 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 noted facts in the record which the director believed cast doubt on the credibility of the applicant's claim. 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.

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 be 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).

The regulation at 8 C.F.R. § 245a.2(d)(3)(v) states that attestations by churches, unions, or other organizations to the applicant's residence by letter must: identify applicant by name; be signed by an official (whose title is shown); show inclusive dates of membership; state the address where applicant resided during membership period; include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; establish how the author knows the applicant; and, establish the origin of the information being attested to.

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.

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 (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 establish continuous residence in the United States from prior to January 1, 1982 through the date she attempted to file a Form I-687 application with the Service in the original legalization application period from May 5, 1987 to May 4, 1988. Here, the applicant has not met her burden of proof.

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 May 19, 2005. 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 listed "[redacted]" in Bronx, New York from April 1981 to May 1990. In Part #33, the applicant indicated that she was self-employed as a hair braider for the duration of the relevant period and she did not list any information at Part #31 of the Form I-687 application where applicants were asked to list all affiliations or associations with clubs, organizations, churches, unions, business, etc.

In support of her legalization application, the applicant submitted a variety of documents which are listed below:

1. An affidavit from [redacted] who indicated that he lived at [redacted] in Bronx, New York. The affiant indicated that he has known the applicant since 1982. He does not indicate how he dates their initial acquaintance, nor does he provide any

other relevant details which are probative of either the applicant's initial entry or her continuous residency in the United States during the relevant period. He did not indicate that he has any direct, personal knowledge of her continuous residence in this country for the duration of the requisite period. He offered no specific information regarding how frequently and under what circumstances he saw the applicant during the relevant period. Given his claim that he has been a friend of the applicant's for 24 years, the lack of detail in his statement is significant, and its probative value is limited.

2. A notarized letter from [REDACTED] who indicated that he lived at [REDACTED], Bronx, New York. Mr. [REDACTED] indicated that he has known the applicant since 1981, however, like the above affiant, he offered no additional information which is probative of the applicant's initial entry or continuous residence in the United States. Given the lack of detail, this letter will be given minimal weight.
3. A handwritten letter from [REDACTED]. Ms. [REDACTED] indicated that she resided at [REDACTED], Corona, New York. The declarant indicated that she met the applicant when they began worshipping at the same mosque. She does not indicate the name of the mosque or any other relevant information regarding the applicant's residency in the United States. Like the above evidence, this letter will be given minimal weight.
4. A letter from the Okyeniba Clinic in Bronx, New York. The letter is signed by [REDACTED]. Dr. [REDACTED] indicated that he treated the applicant for chicken pox in August 14, 1981. He goes on to state that "this was the only encounter I had with [REDACTED]" The letter is not accompanied by any contemporaneous evidence of their doctor patient relationship or medical records of any kind. Thus, while the letter offers minimal proof that the applicant was present in the United States at some point in 1981 it does not indicate that she continuously resided in the United States during the relevant period. It will be given minimal weight.
5. An undated letter from [REDACTED]. Mr. [REDACTED] indicated that the applicant "was under my care since April of 1981 when my cousin [REDACTED] left us." He included with this letter a copy of his non-immigrant G-5 visa dated December 2, 1975 and a pay check stub from the Great Atlantic & Pacific Tea Company dated September 30, 1989. Like the evidence above, this declarant did not indicate that he has any direct, personal knowledge of the applicant's continuous residence in this country for the duration of the requisite period. He offered no specific information regarding how frequently and under what circumstances he saw the applicant during the relevant period. Given the declarant's claims that the applicant lived with him for several years, the lack of detail is significant and this evidence will be given little weight.
6. Finally, the applicant submitted a copy of her passport which lists an issue date of November 24, 2000 in Accra. In support of her application the applicant submitted a sworn statement that she has resided continuously in the United States since April 3, 1981 except for two brief absences, in 1986 and 2003. She did not mention a trip outside the United States in 2000. This inconsistency has not been addressed by the applicant. 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 travel information provided on in her legalization applications. Thus, the credibility of her testimony and submitted evidence is diminished.

On appeal, counsel for the applicant argues that CIS improperly denied the application and that the SCC/LULAC Settlement agreement “did not require the elements that the service alleges.”

Upon review, counsel's assertions are not persuasive. While an applicant's failure to provide evidence other than affidavits shall not be the sole basis for finding that he or she failed to meet the continuous residency requirements, an application which is lacking in contemporaneous documentation cannot be deemed approvable if considerable periods of claimed continuous residence rely entirely on affidavits which are considerably lacking in certain basic and necessary information. As discussed above, the affiants' statements are significantly lacking in detail and do not establish that the affiants actually had personal knowledge of the events and circumstances of the applicant's residence in the United States. Few of the affiants provided much relevant information beyond acknowledging that they met the applicant in 1981. Overall, the affidavits provided are so deficient in detail that they can be given no significant probative value. Further, this applicant has provided no contemporaneous evidence of residence in the United States relating to requisite period, and she has submitted inconsistent testimony and evidence pertaining to her travel outside of the United States during the requisite period.

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 affidavits with minimal probative value, and her own inconsistent statements on Forms I-687, 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 he 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.