

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

L1

[Redacted]

FILE: .

[Redacted]

Office: LOS ANGELES

Date:

JUN 16 2008

MSC 05 224 11416

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 [or Records] 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, Los Angeles. The appeal will be dismissed.

The district director denied the application because the applicant failed to demonstrate credibly that she entered the United States before January 1, 1982, and thereafter resided in a continuous unlawful status throughout the requisite period.

On appeal, the applicant asserted that she was unable to present the necessary evidence because she boarded in others' houses and lost some essential documents when moving from one residence to another. The applicant also provided additional evidence.

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 was filed. Section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2).

For purposes of establishing residence 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.

As to the requirement of continuous residence in the United States from January 1, 1982 through the date the application is filed, the regulation at 8 C.F.R. § 245a.2(h)(1) provides that an applicant shall be regarded as having resided continuously if no single absence during the salient period was longer than 45 days and the aggregate of all absences does not exceed 180 days.

The applicant has the burden of proving by a preponderance of the evidence that he or she resided continuously in the United States from January 1, 1982 until he or she filed his or her application, was continuously physically present in the United States from November 6, 1986 until the date of filing the application, 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. 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.

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 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.

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant’s employment must provide the applicant’s address at the time of employment, identify the exact period of employment, show periods of layoff, state the applicant’s duties, declare whether the information was taken from company records, and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

The applicant submitted the instant Form I-687 on June 1, 2005.

The record contains:

- a letter addressed to the applicant at her address in the Bronx and postmarked August 28, 1984;
- an affidavit, dated February 28, 2006 and notarized on March 3, 2006 from [REDACTED];<sup>1</sup> and
- an undated form affidavit from [REDACTED].<sup>2</sup>

---

<sup>1</sup> The name “[REDACTED]” is an approximation of the name signed to the affidavit, which is not completely legible.

<sup>2</sup> The record contains an additional affidavit attesting to the applicant’s residence and physical presence in the United States since 2002. This office notes that this attestation is not relevant to any material issue in this case.

The record contains no other evidence pertinent to the applicant's continuous residence or continuous physical presence in the United States during the salient periods.

The letter addressed to the applicant in the Bronx is postmarked August 28, 1984, as was noted above. The five stamps on that letter are Nigerian 2k. Volkswagen Motor Assembly Plant commemoratives. Reference to the 2006 Scott Standard Postage Stamp Catalogue at page 1324 (Catalog #489A140) shows that stamp was issued on June 16, 1986. That stamp could not possibly appear on an envelope that was legitimately postmarked August 28, 1984.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, the applicant must resolve any inconsistencies in the record with competent, independent, objective evidence. Attempts to explain or reconcile such inconsistencies, absent competent objective evidence sufficient to demonstrate where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (Comm. 1988).

Not only has the credibility of that particular piece of evidence, the stamped, postmarked envelope, been destroyed, but the credibility of the other evidence in the record and all of the applicant's assertions are also rendered suspect.

's affidavit states,

This is to attest to the fact that I have been knowing [the applicant<sup>3</sup>] for the past sixteen years (1980).

Yinka was a friend of the family before she traveled to the U.S.A. in 1981. She came back to the United States in the year 2002 and has lived here ever since.

This office notes that from 1980 until the date of that letter, February 28, 2006, is not 16 years, but 26 years. Further, the affiant's address and phone number were not provided with that affidavit, and although the affiant claims to have known the applicant since 1980, when she lived in the Bronx, the affidavit was notarized in California. Finally, the affiant dated the letter February 28, 2006, indicating that he wrote it, and apparently signed it, on that date. The notary's attestation states, "Subscribed and sworn to before me [the notary] this 03rd day of March 2006." How a notary is able to attest, on March 3, 2006, to a signature placed on a document on February 29, 2006, is unknown to this office.

In his undated affidavit, \_\_\_\_\_ of Leona Valley, California, stated that he first met the applicant at a friend's 1983 Christmas party in Bronx, New York. He stated that they have been constantly in touch since, and that the applicant moved to California during 2002. \_\_\_\_\_ did

<sup>3</sup> The affidavit refers to "\_\_\_\_\_". This office assumes that \_\_\_\_\_ is a shortened form of the applicant's given name, \_\_\_\_\_. Although \_\_\_\_\_ is not a name the applicant claims to have used, this office notes that it is her mother's family name. This office finds, therefore, that the affidavit refers to the applicant.

not state whether he lived in California when he attended the party in the Bronx, or whether he is claiming to have also lived in the Bronx and to have subsequently moved to California.

In the Notice of Decision, dated July 31, 2006, the director denied the application, finding that the applicant failed to demonstrate continuous physical presence during the requisite period.

On appeal, the applicant stated that, because she moved, she is unable to present additional documentation.

In order to obtain an explanation of the postmark discrepancies described above, this office issued a notice of adverse evidence on April 2, 2008. That notice read, in essential part,

During the adjudication of your appeal, information has come to light that seriously compromises the credibility of your claims. Based upon this information, the AAO intends to dismiss your appeal. Pursuant to Citizenship and Immigration Services (CIS) regulations at 8 C.F.R. § 103.2(b)(16)(i), we hereby notify you of this derogatory information and provide you with an opportunity to respond before we render our final decision.

With your application, you submitted a photocopy of a stamped envelope, postmarked August 28, 1984, ostensibly mailed from Nigeria to you at [REDACTED] in the Bronx, New York.

The envelope postmarked August 28, 1984 bears five Nigerian postage stamps each with a value of 2k. and depicting the Volkswagen Motor Assembly Plant. This stamp is listed at page 1324 of Volume 4 [sic] of the 2006 *Scott Standard Postage Stamp Catalog* and is listed as catalog #489 A140. The date of issue of that stamp is June 16, 1986. It could not possibly appear on an envelope that was legitimately postmarked August 28, 1984.

The fact that an envelope postmarked August 28, 1984 bears a stamp that was not issued until after that date indicates that you utilized documents in a fraudulent manner and made material misrepresentations in an attempt to establish your residence within the United States during the requisite period. By engaging in such an action, you have seriously undermined your own credibility, the credibility of all of the evidence you have submitted, and the credibility of your claim of continuous residence in this country for the requisite period.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). By

submitting envelopes with fraudulent postmarks, you have made a material misrepresentation of your dates of residence to gain the benefit of temporary resident status, thus casting doubt on your eligibility for this visa classification.

Section 212(a)(6)(C) of the Act provides:

Misrepresentation. – (i) In general. – Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

By filing the instant petition and submitting the fraudulent evidence described above, you appear to have sought to procure a benefit provided under the Act through fraud and willful misrepresentation of a material fact. Unless you are able to provide independent and objective evidence to overcome, fully and persuasively, our above findings, the AAO will dismiss your appeal and enter a formal finding of fraud into the record. While you may choose to withdraw your appeal, this will not prevent a finding that you have sought to procure immigration benefits through fraud and willful misrepresentation of a material fact, and this matter shall be referred to the U.S. Attorney for possible prosecution. *See* 8 C.F.R. § 245a.2(t)(4).

In response, counsel submitted a letter dated April 16, 2008. In that letter counsel stated,

[The applicant] contacted the Nigeria Post Office regarding this matter. The Nigeria Post Office advised [the applicant] that it is possible that they are liable for the discrepancy on the postmark. The Nigeria Post Office acknowledged that since the postmark equipment that they used are manually adjusted, it is not unusual for them to have such a wrong postmark dates [sic] on their envelope.

The Nigeria Post Office advised [the applicant] that they would provide a letter explaining the problems they are experiencing in postmarking their envelopes. However, the person authorized to sign such a letter is not available, as he is attending a regional seminar/event.

Counsel requested a three-week extension of time to obtain and submit that letter, which request this office granted. That letter has not been submitted.

The assertions of counsel are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980); Unsupported assertions of counsel are, therefore, insufficient to sustain the burden of proof. Even if it were to be considered as evidence, counsel's assertion that the Post Office of Nigeria said something to the applicant would constitute very attenuated hearsay.

Later, counsel submitted an envelope mailed from Nigeria to a friend of the applicant in California and postmarked June 3, 2002. Counsel also submitted a letter, dated May 6, 2008, from that friend indicating that she received that envelope from Nigeria March 21, 2008. Although that letter bears a notary's stamp, the notary did not attest to the writer's signature or indicate that the writer swore to the contents of that letter.

In an accompanying letter, dated May 7, 2008, counsel stated, "This evidently proves that [the applicant's] claim that the envelope she previously submitted to the US Citizenship & Immigration Services must have been postmarked erroneously."

In a subsequent letter, dated May 8, 2008, counsel asserted that [redacted] of the Inspection Office of the Post Office of Nigeria reiterated that incorrectly dated postmarks are not unusual in Nigeria, but added that the post office would not provide a letter to that effect because their system is not computerized. Again, counsel's assertion is not evidence.

The substance of the fraud accusation against the applicant is that she submitted a letter with a backdated postmark in support of her claim of residence in the United States during the requisite period. That a friend of the applicant also has an incorrectly postmarked letter may indicate that such errors are common. On the other hand, it may indicate that interested parties can obtain envelopes with intentionally backdated postmarks. That letter does nothing to discourage a finding that the applicant engaged in fraud in seeking an immigration benefit.

Counsel's assertion that a Nigerian official assured the applicant that postmarking errors are common will not, as was noted above, be considered. The applicant has submitted insufficient evidence to overcome the clear implication of backdated envelope that she submitted, that she engaged in fraud. This office finds that she did, in fact, intentionally submit a fraudulent document misrepresenting a material fact, and that she is therefore inadmissible pursuant to section 212(a)(6)(C) of the Act, which is set out above.

The remaining issue in this matter is that which formed the basis for the decision of denial. That is, whether the applicant has furnished sufficient credible evidence to demonstrate continuous unlawful residence in the United States from prior to January 1, 1982, through December 31, 1987. One item of evidence submitted to demonstrate this continuous residence during that period clearly did not come from that period. It has been determined to be fraudulent. That the applicant submitted such a document detracts markedly from credibility of the two affidavits submitted, which constitute the balance of the applicant's evidence of continuous residence.

The evidence must be evaluated not by the quantity of evidence alone but by its quality. 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.

The absence of sufficiently credible documentation to corroborate the applicant's claim of continuous residence for the entire requisite period detracts from the credibility of her claim. Given the paucity of credible supporting documentation she has failed to meet her burden of proof and failed

to establish entry into the United States before January 1, 1982 and continuous residence in the United States thereafter through the end of the qualifying period as required by section 245A(a)(2) of the Act, 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. The application was correctly denied on that basis, which has not been overcome on appeal.

In legalization proceedings, the burden of proving eligibility for the benefit sought remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. The appeal will be dismissed.

**ORDER:** The appeal is dismissed. This decision constitutes a final notice of ineligibility.