

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



**U.S. Citizenship
and Immigration
Services**

PUBLIC COPY

41



JUN 20

FILE: [REDACTED]
MSC 06 101 26693

Office: NATIONAL BENEFITS CENTER

Date:

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:



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 Director, National Benefits Center, and 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. Specifically, the director discussed each of the three affidavits submitted by the applicant in support of her application and found that all three documents lacked probative value, as they failed to address the issue of the applicant's residence in the United States during the statutory time 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, counsel for the applicant asserts that the applicant was denied the right to establish her eligibility by providing her oral testimony at an interview. Counsel also indicates that he intends to submit a brief in support of the appeal within thirty days. However, the appeal was filed on August 17, 2006 and there is no record that further documentation has been submitted. It is noted that the AAO contacted counsel and sent him a fax, notifying him that the record had not been supplemented with documentation. To date, however, counsel has not responded with further information. As such, the AAO will adjudicate this appeal on the basis of the record as presently constituted.

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 until the date of filing the application. 8 C.F.R. § 245a.2(b)(1).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the alien 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.* 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 during the requisite time period. In the present matter, the applicant has failed to meet this burden. The record shows that at the time Form I-687 was initially filed, the applicant did not provide any documentation in support of the claim that she had resided in the United States continuously throughout the statutory period

Accordingly, on March 29, 2006, the director issued a notice of intent to deny (NOID), allowing the applicant the opportunity to provide evidence establishing her residence in the United States during the prescribed period. The record shows that the applicant responded by submitting three documents: 1) a letter dated April 11, 2006 from [REDACTED], who claimed that she had employed the applicant for five years; 2) a letter dated April 10, 2006 from [REDACTED] who claimed that she had employed the applicant for ten years; and 3) a letter dated April 11, 2006 from [REDACTED], who claimed that she had known the applicant for five years. Thus, the earliest that any of these individuals claimed to have known the applicant is 1996.

The director reviewed all three documents and discussed their respective contents in the resulting notice of denial of the application. Specifically, the director determined that all three documents lacked probative value, as none of the three individuals claimed that they had any personal knowledge of the applicant's residence in the United States during the statutorily relevant time period.

Counsel's claim on appeal that the applicant would have been able to establish eligibility at an interview is without merit. In the NOID, the applicant was fully apprised of the deficiencies in her application. The director specifically enumerated the deficiencies in the documentation previously submitted by the applicant, thereby giving her ample opportunity to supplement the record with adequate documentation. Asserting that the applicant would be better able to establish her claim during an interview suggests that the applicant's testimony alone would be sufficient to establish her eligibility for the immigration benefit sought. However, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Lastly, the record shows that the applicant submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on January 9, 2006. At No. 30 of the Form I-687, where applicants were asked to list all residences in the United States since first entry, this applicant showed her first address in the United States to be in Quincy, Massachusetts from 1995 to 1998.

In summary, the applicant has not provided any evidence of residence in the United States relating to the 1981-88 period and has completed her Form I-687 application in a way that suggests that she was not, in fact, residing in the United States during that time period.

The absence of supporting 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 information provided by the applicant in her application and her reliance upon documents with no probative value, 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 she 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-*, 20 I&N Dec. 77. 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.