



U.S. Citizenship
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FILE: [REDACTED]
MSC-05-223-10337

Office: NEW YORK

Date: **MAY 19 2006**

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: SELF-REPRESENTED

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 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, New York, 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 asserts that she is appealing the director's decision, *inter alia*, because she has sent all the documents requested.

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 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 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 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 (CIS) on May 11, 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 showed her first address in the United States to be at [REDACTED] Bronx, New York from October 1981 to March 1992. Similarly, at part #33, she showed her first employment in the United States as self-employed as a hair braider at the same above address from October 1981 to March 1992.

According to the record of proceeding, the applicant has claimed that she entered the United States in 1981 with a visa at the age of 16 and 1/2 years old. No visa from 1981 was submitted by the applicant.

The applicant submitted a copy of the biographic page of her passport issued by the Republic of Ghana stating that she was born May 16, 1964, and the following documentation:

- An undated declaration from [REDACTED] of New York, New York, who stated that she has known the applicant since 1982 and knows that the applicant is a trustworthy, reliable and dependable person. Ms. [REDACTED] provided no further detailed or verifiable information about the applicant’s residence in the United States during the requisite period and her declaration is of little probative value.

- An undated declaration from [REDACTED] of New York, New York, who stated that she has known the applicant since 1986 and knows that the applicant is an outstanding individual. Ms. [REDACTED] provided no further detailed or verifiable information about the applicant's residence in the United States during the requisite period and her declaration is of little probative value.
- An affidavit made January 20, 2006 from [REDACTED] of Far Rockaway, New York, who affirmed that he had known the applicant for many years and that "I make this affidavit in support of his/her claim of residence in the U.S. since before January 1, 1982 and residing at the ". . . [REDACTED], Bronx, N.Y. 10459 from 1981 to 1992." It is noted that the declarant did not state with any specificity where he first met the applicant, how he dates his acquaintance with her, or whether he has direct, personal knowledge of the address at which she was residing during the requisite period. The declarant's ambiguous reference to "that he had known the applicant for many years" is not persuasive.
- A statutory declaration made January 17, 2006, from [REDACTED] of North York, Ontario, Canada, who stated that the applicant is her niece and "on December 20, 1981, . . . [she] invited [the applicant] to come help me in Toronto, Ontario Canada . . ." and that the applicant left for the United States on January 11, 1982. The declaration made by [REDACTED] cannot be evidence of the applicant's entry into the United States before January 1, 1982 since she stated that the applicant left for the United States on January 11, 1982.
- A declaration from [REDACTED] church pastor of the Seventh-day Adventist Church, of the Bronx, New York, who stated that the applicant is a member of the First Ghana Seventh-day Adventist Church, and the applicant is member of the women ministries branch of the congregation.

The regulation at 8 C.F.R. § 245a.2(d)(3)(v) states attestations by churches to the applicant's residence shall be by letter which identifies the applicant by name, is signed by an official (whose title is shown), shows inclusive dates of membership, states the address where the applicant resided during the membership period, includes the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery, establishes how the author knows the applicant; and establishes the origin of the information being attested to. The declaration of Pastor [REDACTED] is deficient since it does not show the applicant's dates of membership or the address where applicant resided during her membership period.

In the Notice of Intent to Deny (NOID) dated February 9, 2006, the director stated that it appeared that the applicant was 14 years of age, which is of school age when the applicant first entered the United States. If true the director noted that the applicant "could have submitted [s]chool records, medical records or other form[s] of legal documentation showing you were in the United States during the statutory period. In view of the documents submitted, you have failed to submit evidence that would constitute a preponderance of evidence as your residence in the United States."

The director denied the application for temporary residence on May 24, 2006. In denying the application, the director found that the applicant's testimony and evidence submitted that she entered the United States in 1981 were not credible.

On appeal, the applicant asserts that she did arrive in the United States in 1981. In support of her claims, the applicant submits the following:

- A letter from [REDACTED], M.D., that she was treated by the Okyeniba Clinic, Bronx, New York on June 14, 1986 and October 2, 1988.
- A statutory declaration by [REDACTED] of the Republic of Ghana, that the applicant was a student of Wiamoase S.D.A. Junior Secondary School from 1978 to 1981.
- A statutory declaration by [REDACTED] of the Republic of Ghana, that the applicant was a pupil of the Wiamoase S.D.A. Primary "A" School when she registered in 1971. This declaration is accompanied by a corresponding "Register of Admission."

The statements of [REDACTED] and [REDACTED] are not evidence supporting the applicant's statement that she entered the United States before January 1, 1982. The letter from [REDACTED], M.D., is not evidence supporting the applicant's statement that she entered the United States before January 1, 1982. According to the regulation at 8 C.F.R. § 245a.2(d)(3)(iv) evidence to establish proof of continuous residence in the United States during the requisite period of time may consist of medical records showing treatment of an applicant and the name of the physician and the date(s) of that applicant's treatment. No medical records were submitted by the physician or applicant to substantiate the letter statement. Dr. [REDACTED]'s letter statement has slight probative evidentiary value in this matter.

In summary, the applicant has not provided sufficient, probative and credible evidence of residence in the United States relating to the requisite period and her of entry to the United States before January 1, 1982. The statements and affidavits lack credibility and probative value for the reasons noted above.

In this case, the absence of credible and probative evidence 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 inconsistencies in the record and the lack of credible supporting documentation, it is concluded that she 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.