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U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: WEST PALM BEACH

Date:

OCT 24 2008

MSC 06 059 10611

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:

SELF-REPRESENTED<sup>1</sup>

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

<sup>1</sup> The applicant's Form I-694, Notice of Appeal of Decision, was signed by Ivan Powell of Caribbean Social Services, Corp. A Form G-28, Notice of Entry or Appearance as Attorney or Representative, which was signed by Mr. Powell and the applicant, indicates that Caribbean Social Services, Corp. is a "non-profit Community services Organization." On August 28, 2008, the Administrative Appeals Office (AAO) sent a letter to Mr. Powell requesting evidence within 15 days to show that Caribbean Social Services, Corp. is entitled to represent others in USCIS proceedings. As of this date, the AAO has not received any such evidence. Therefore, the applicant is considered self-represented for these proceedings.

**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, West Palm Beach, Florida. 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, on November 28, 2005. On November 28, 2006 the applicant was interviewed by a Citizenship and Immigration Services (CIS) officer. On November 29, 2006, the director denied the application, determining 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.

A brief has been submitted on appeal.

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 applicant attempted to file the application. 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 have been physically present in the United States from November 6, 1986 until the date of filing or attempting to file the application. 8 C.F.R. § 245a.2(b)(1).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "until the date of filing" shall mean 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 "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. See 8 C.F.R. § 245a.2(d)(6).

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 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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to establish her entry into the United States prior to January 1, 1982 and continuous unlawful residence since such date for the requisite time period.

On the Form I-687 filed November 28, 2005, the applicant indicates that she last entered the United States in April 2001 with a visitor's visa. The applicant lists her addresses for the pertinent time period as:

Rockville Centre, New York from July 1980 to June 1986; and [REDACTED] Brooklyn, New York from July 1986 to December 1992. The applicant lists her absences from the United States during the applicable time period as: in May 1982 to Jamaica to visit children and family; in February 1983 to Jamaica to visit family; in June/July 1984 to visit family; in March/April 1985 to have baby; in April 1986 to visit baby; in August/September 1987 to visit baby; and November/December/January 1988/1989 to get married. The applicant does not list any organizations or churches that she belongs to on the Form I-687. The applicant lists her employment: as a babysitter from July 1980 to June 1986 for [REDACTED] at [REDACTED] in Rockville Centre, New York; and as a caregiver from July 1986 to December 1992 for [REDACTED] at [REDACTED] in Brooklyn, New York.

The record also includes three affidavits to substantiate the applicant's entry into and continuous unlawful residence for the requisite time period:

- A November 10, 2005 affidavit signed by [REDACTED] residing in Royal Palm Beach, Florida who declares that he is the applicant's cousin. The affiant states that he is aware: that the applicant migrated to the United States in July 1980 and that she left from the Norman Manley International Airport going to JFK International Airport; and that the applicant "would call regularly to be informed on her children's progress and also to keep us informed on her whereabouts and what was happening with her."

The affiant further states that he knows: that the applicant "lived with [REDACTED] at [REDACTED], Rockville Centre, New York 10467 from July 1980 to June 1986;" that the applicant worked as [REDACTED] babysitter; that in July 1986 the applicant worked as a caregiver to [REDACTED] living at [REDACTED] in Brooklyn, New York; that he is aware of these jobs because the applicant lived with her employers and he would visit her from time to time to check on her. The affiant claims he is aware of several trips the applicant made to Jamaica including trips in May 1982, short trips in 1983 and 1984, a trip in May 1985 to have a baby spending about 35 days in Jamaica before returning to the United States, and trips in 1986, 1987 and then in November 1988 to get married.

- A November 14, 2005 affidavit signed by [REDACTED] residing in Royal Palm Beach, Florida who declares that he has been associated with the applicant for over 20 years and knew that she had migrated to the United States in July 1980. The affiant identifies himself as the pastor of the church the applicant now attends. The affiant states that he is aware: that the applicant "lived with her friend [REDACTED] at [REDACTED], Rockville Centre, New York from her entry here in the US in July 1980 until June 1986;" that the applicant worked as [REDACTED]'s babysitter until the child was old enough to go to school; that in July 1986 the applicant worked as a caregiver to [REDACTED] living at [REDACTED] in Brooklyn, New York. The affiant states that the applicant told him about several trips to Jamaica in May 1982 for ten days, in 1983 and 1984 and in March 1985 to have her baby, in 1986 and 1987 each time for five days maximum; and in November 1988 to get married. The affiant declares that the affiant has been living in the United States continuously for the past twenty plus years.
- A November 14, 2005 affidavit signed by [REDACTED] residing in Royal Palm Beach, Florida who declares that he has been acquainted with the applicant for over 28 years and that she migrated to the United States in or around July 1980. The affiant identifies himself as a deacon at the First Holiness Church, the church the applicant now attends. The affiant observes that the applicant told him: that she departed from the Norman Manley International Airport going to JFK International Airport; that she "lived with [REDACTED] from July 1980 to June 1986 at [REDACTED], Rockville Centre, New York 10467 and she worked for her as her babysitter;" that she worked as a caregiver for [REDACTED] at [REDACTED] in Brooklyn, New York from July 1986 to December 1992; that she made trips to Jamaica in May 1982 for ten days, in 1983 and 1984 for no more than five days each, in March 1985 to have a baby, in 1986 and 1987, and in November 1988 to get married.

The applicant also provided a sworn statement dated November 10, 2005 declaring: that she did not pay rent when she first arrived and thus had no rental receipts; that she did not keep copies of electricity bills; that she did not keep receipts for furniture and appliances that she had purchased; that she was not given an Internal Revenue Service (IRS) Form W-2, by her employers because of her status; and that when she

found out she was pregnant in 1984 she visited a doctor in the Bronx, New York, but did not keep the bills and receipts.

At the applicant's interview with a CIS officer on November 29, 2006, the applicant testified: that she first entered the United States in July 1980; that she came through the Bahamas on a plane by using her cousin's American passport to Miami; that she entered the United States in Florida; and that she left the United States seven times, each time using her passport to enter the Bahamas and using her cousin's American passport that had the applicant's picture in it to return to the United States. The applicant was asked at the interview if she was given an additional 30 days to respond could she provide or show proof that she had entered the United States prior to January 1, 1982 through May 4, 1988. The applicant replied that she could not, "because the lady I usually work with died and that person would sign for me and she is not alive anymore."

On appeal, the applicant's representative asserts that CIS did not consider the terms of the settlement agreements when requesting documentary evidence in addition to the affidavits presented by the applicant. The representative contends that the settlement agreements allow an applicant to rely exclusively on affidavits to establish entry into the United States and continuous unlawful presence and that if CIS considered the affidavits insufficient, CIS should have afforded the applicant an additional 30 days to submit additional evidence. The representative claims that the director's conclusion that the information submitted did not constitute a preponderance of evidence as to the applicant's residence violated the terms of the settlement agreement.

Preliminarily, the AAO finds that the applicant had opportunity to submit further evidence in response to the CIS interviewing officer's question and again on appeal and has not done so. The AAO observes that according to the settlement agreements, the director shall issue a NOID before denying an application for class membership. Here, the director adjudicated the Form I-687 application on the merits. As a result, the director is found not to have denied the application for class membership and the failure to issue a NOID is not reason to remand the matter.

The AAO has reviewed the evidence of record, including the three affidavits submitted in support of the application. The AAO finds that the director did not deny the application because the applicant relied exclusively on affidavits in support of her claim; but rather the director denied the application because the affidavits submitted were deficient.

The AAO finds that the three affidavits submitted are remarkably similar to each other. None of the affiants claim that they resided in Rockville Centre, New York in July 1980 to June 1986 or in Brooklyn, New York from July 1986 to December 1992. The AAO acknowledges affiant [REDACTED]'s claim that he would visit the applicant from time to time at her employers' addresses, but this claim is not substantiated with detail of the circumstances and events surrounding such visits. Moreover, visits from time to time with no specific delineation of the time and concrete details of the circumstances and events of the visits are insufficient to establish the continuous nature of the applicant's residence as required by 8 C.F.R. § 245a.2(d)(5) and *Matter of E-M-*, 20 I&N Dec. at 79-80. In addition, the affidavits signed by Hurdley Mitchell and Lione Whitehall are not based on personal knowledge of the affiants but are based

upon what the applicant told them. These affidavits are deficient and not probative for this reason. Further, the affidavits of [REDACTED] and [REDACTED] indicate their belief that the applicant left Jamaica in 1980 and migrated to the United States entering the United States at the JFK International Airport, whereas the applicant testified at her interview that she first entered the United States in Miami, Florida. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The affidavits submitted fail to provide adequate detail regarding the affiants' knowledge of meeting the applicant in the United States, when they met the applicant in the United States, and their subsequent interactions with the applicant where she claimed to live during the applicable time period of prior to January 1, 1982 to May 4, 1988 or the date the applicant attempted to file her application. The general nature of the affidavits, the lack of information substantiating that the affiants had actual knowledge of the applicant's whereabouts for the requisite time period, and the provision of information that conflicts with the applicant's testimony undermines the legitimacy of the affidavits. For these reasons, the affidavits are deficient and have no probative value in this proceeding.

These deficient affidavits and the applicant's statements during her interview comprise the only evidence of the applicant's residence in the United States from prior to January 1, 1982 through the requisite time period. The affidavits lack credibility and probative value for the reasons noted. It is not that the applicant provided only affidavits to support her claim; rather it is the failure to provide affidavits that sufficiently relate to the applicant's claim to have resided in the United States during the requisite time period. The affidavits submitted do not provide relevant, probative details of the applicant's entry into the United States and continuous unlawful presence. The absence of credible and probative 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.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 lack of information in the affidavits and the lack of any other credible supporting documentation, it is concluded that 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. The appeal will be dismissed.

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