

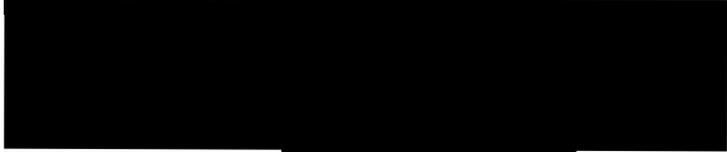
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

L1



FILE:



Office: HOUSTON

Date: SEP 15 2008

MSC 05 230 11034

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

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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, Houston, Texas. 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 May 18, 2005. On November 17, 2005 the director issued a Notice of Intent to Deny (NOID) the application, noting that the applicant had not provided evidence of eligibility. In response, the applicant submitted three affidavits. The applicant was interviewed by a Citizenship and Immigration Services officer on June 1, 2006. On November 30, 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.

The record contains a G-28, Notice of Entry of Appearance as Attorney of Record or Representative, which is not signed by the applicant. On August 21, 2008, the AAO sent a request to the attorney designated on the G-28 and requested that he submit a G-28, signed by the applicant. The AAO noted that a failure to respond may result in a summary dismissal of the appeal. To date the AAO has not received a copy of a signed G-28, thus the record does not contain evidence that the applicant is represented or has filed an appeal. The AAO in this instance will briefly discuss the evidence in this matter in the interest of thoroughness.

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 on May 18, 2005 the applicant indicates that she last entered the United States in April 1981 without a visa. The applicant lists her address for the pertinent time period as: [REDACTED] New York, New York from April 1981 to October 1988. The applicant does not list any absences from the United States during the applicable time period. The applicant's date of birth is May 19, 1978, making her three years old when she first entered the United States.

The record includes three affidavits:

- An undated affidavit signed by [REDACTED] residing in Houston, Texas who declares that he first met the applicant in December 1981 at his friend's apartment and that he met the applicant as a little girl with her aunt.
- A December 17, 2005 affidavit signed by [REDACTED] residing in New York who declares that she met the applicant through the applicant's aunt at a birthday party in December 1984. The affiant declares that the applicant's aunt left the applicant in her care and that she assisted the applicant in her application for temporary residency in April 1987 but that the applicant was turned down.

- A November 28, 2005 affidavit signed by [REDACTED] who declares that he is the applicant's uncle and that he first met the applicant in April 1995 when she came to Houston, Texas from New York by bus.

The record also contains a copy of the applicant's Nigerian passport issued March 15, 2002.

The AAO has reviewed the documentation submitted and observes that the affidavit submitted by [REDACTED] and the affidavit submitted by [REDACTED] are deficient. The affiants fail to provide details regarding their relationship with the applicant. The affiants do not provide adequate information regarding how they met the applicant, a three-year old child in 1981, and do not include descriptions of the events and circumstances subsequent to meeting the applicant. There is no information in either affidavit sufficient to establish the affiants' and applicant's relationship during the requisite time period. These affidavits fail to provide details including the nature and frequency of their contact with the applicant and whether the applicant was absent from the United States during the requisite period. Lacking relevant details, these affidavits have minimal probative value.

The affidavit of [REDACTED] relates to a time period outside of the pertinent time period and thus has no probative value in establishing the applicant's entry into the United States prior to January 1, 1982 and continuous unlawful presence during the requisite time period.

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 support 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.