

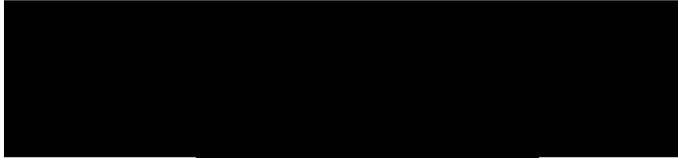
Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



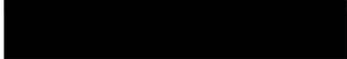
U.S. Citizenship
and Immigration
Services

PUBLIC COPY

L1



FILE:



MSC-05-257-14332

Office: CLEVELAND

Date:

APR 14 2008

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. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

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, Cleveland. 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 reasserts her eligibility for temporary resident status and she submits attestations as 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 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. 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)(1).

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)(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. See CSS Settlement Agreement paragraph 11 at page 6 and 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.* 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 his or 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 June 14, 2005.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted a letter from [REDACTED] in which he stated that he has known the applicant since 1980 when they met in Chicago. Here, the statement is inconsistent with the information provided by the applicant on her Form I-687 application, part #30 where she indicated her first address in the United States was [REDACTED] Chicago, Illinois, from 2000 to 2002. The applicant has not provided any evidence that she was present in Chicago in 1980 as claimed by the declarant. It is not clear from the record how frequently the affiant had contact with the applicant during the requisite period. The affiant has not provided evidence that he himself was present in the United States during the requisite period. Though not required to do so, the affiant has not provided proof of his identity with this affidavit. It is also noted that the affiant fails to list the applicant's address(es) in the United States during the requisite time period. The affidavit lacks detail that would lend credibility to the claimed relationship with the applicant. Because this affidavit is lacking in detail, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

In response to the director's Notice of Intent to Deny (NOID), the applicant submitted a number of retail receipts dated 1993 through 1994. The receipts are dated subsequent to the requisite period, and therefore, cannot be used to support the applicant's claim of continuous unlawful residence in the United States. The applicant also submitted a letter from [REDACTED] in which he stated that he has known the applicant since February of 1981, when she first arrived in the United States. Here, the affiant fails to indicate how he met the applicant and where he met the applicant. He has failed to specify the frequency with which he saw the applicant during the requisite period. The affiant has not provided evidence that he himself was present in the United States during the requisite period. Although the affiant attested to knowing the applicant since 1982, he failed to provide any relevant and verifiable testimony, such as the applicant's addresses in this country, to corroborate the applicant's claim of residence in the United States since prior to January 1, 1982. Because this affidavit is significantly lacking in detail, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

In denying the application the director noted that the receipts submitted by the applicant were not dated within the requisite period, and that the attestations submitted were not sufficient to demonstrate the applicant's continuous residence throughout the requisite period.

On appeal, the applicant claims eligibility for the benefit sought and submits additional attestations as evidence.

The applicant submitted an affidavit from [REDACTED] in which he stated that he met the applicant and her parents on January 10, 1982, through a mutual friend, [REDACTED] of the Precise African Art Gallery in New York. He further stated that he could not affirmatively state that the applicant came to the United States in 1981. The affiant also stated that he had infrequent contacts with the applicant until she contacted him requesting that he provide a statement to Citizenship and Immigration Services. Statements made by the affiant are insufficient to establish the applicant's residence in the United States since before January 1, 1982 and throughout the requisite period.

The applicant also submitted a letter from an administrative representative from the Harlem Hospital of New York dated September 22, 2006, in which she stated that the hospital records showed that the applicant's mother brought her into the out-patient unit of the hospital to receive immunization shots in October of 1982. She also stated that the hospital records showed the applicant was again brought to the hospital in August of 1983, February of 1986, and December of 1989. Here, the hospital records are insufficient to support the applicant's contention that she continuously resided in the United States since before January 1, 1982 and throughout the requisite period.

In the instant case, the applicant has not provided sufficient evidence of residence in the United States relating to the requisite period. It is further noted that although the applicant has

submitted attestations from four people, they are lacking in detail and are insufficient to establish her residence prior to January 1, 1982 and throughout the requisite period.

The absence of sufficiently detailed 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 inconsistency that exists between the applicant's information on her Form I-687 application and the attestation of Boubacar Kanoute as noted above, and the applicant's reliance upon documents with minimal probative value, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States for the requisite period 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.