

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



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

PUBLIC COPY

41

FILE:

MSC-05-335-10051

Office: NEW YORK

Date:

MAR 03 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:

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.

A handwritten signature in black ink, appearing to read "R. 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, 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. The director also found documents submitted by the applicant not to be credible because they were inconsistent with other information provided by the applicant.

On appeal, counsel for the applicant stated that the applicant has submitted credible affidavits and evidence in support of her eligibility for temporary resident status, and that the CSS/Newman Settlement Agreement did not require the elements that the director alleged. Counsel also made factual assertions in an attempt to explain inconsistencies identified by the director.

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. 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.* 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 August 31, 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 listed the following addresses: [REDACTED], Flushing, New York from February 1980 to May 1983; [REDACTED] Flushing, New York from June 1983 to June 1986; and [REDACTED] Flushing, New York from July 1986 to October 1998.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided two attestations. The declaration from [REDACTED] states that the declarant met the affiant in 1981. The declaration from [REDACTED] states that the affiant has known the applicant since 1981. Both of these declarations fail to confirm that the applicant resided in the United States during the requisite period.

The applicant also submitted multiple photocopies of applications for transfer of funds. Several of these documents contain dates falling outside of the requisite period and are, therefore, not relevant to the determination of whether the applicant meets the residency requirements for temporary resident status. Three of these documents contain dates indicating they were created during the requisite period. Two of the documents, dated June 1, 1987 and October 9, 1987 respectively, list the applicant's address as [REDACTED], Flushing, New York. This information is inconsistent with the applicant's Form I-687 which indicates she resided at [REDACTED] during 1987, rather than at [REDACTED] as listed on the funds transfer applications. One of documents is dated February 3, 1988 and lists the applicant's address as [REDACTED] Flushing, New York. This information is also inconsistent with the applicant's Form I-687, which indicates she resided at [REDACTED] during 1988, rather than at [REDACTED] as listed on the funds transfer application. These inconsistencies call into question the applicant's claim to have resided in the United States during the requisite period.

In denying the application the director noted 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 also found documents submitted by the applicant not to be credible because they were inconsistent with other information provided by the applicant. Specifically, the director noted inconsistencies between the addresses for the applicant listed on the funds transfer applications and on her Form I-687.

On appeal, counsel for the applicant stated that the applicant has submitted credible affidavits and evidence in support of her eligibility for temporary resident status, and that the CSS/Newman Settlement Agreement did not require the elements that the director alleged. Counsel also made factual assertions in an attempt to explain inconsistencies identified by the director. Counsel stated that the addresses listed on the funds transfer applications "may not be the same information already listed on the application does not mean that those receipts are not credible as the addresses listed was [sic] for mailing purposes. All transactions were done through Hong Kong and Shanghai Bank in New York." Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Since counsel's assertions are not supported by the evidence in the record, these assertions will not be considered in the determination of whether the applicant has met her burden of proving that she resided continuously and unlawfully in the United States throughout the requisite period.

In summary, the applicant has provided contemporaneous evidence of residence in the United States relating to the requisite period that is inconsistent with her Form I-687 application. She has submitted attestations from only two people concerning that period. Both declarations submitted by the applicant fail to confirm that the applicant resided in the United States during the requisite period.

The absence of sufficiently detailed 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 contradictions between the applicant's supporting documents and the information on her application, and given her 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.