

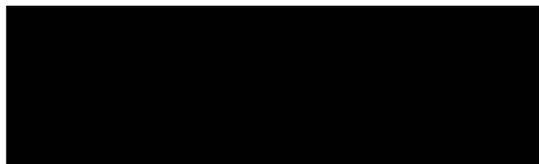
Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

L



FILE: [Redacted]
MSC-05-223-10941

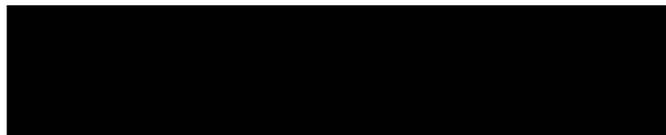
Office: CLEVELAND

Date: **MAR 19 2008**

IN RE: Applicant: [Redacted]

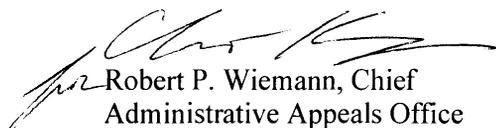
APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the
Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:



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, counsel asserts that the applicant entered the United States in 1978, and has submitted sufficient evidence to establish her continuous residence in the country.

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 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 [REDACTED] Chicago, Illinois, from July of 1978 to February of 1990.

In response to the director's Notice of Intent to Deny (NOID), the applicant submitted the following attestations:

- A letter dated February 10, 2006 from [REDACTED] of the Ghana Council, Columbus, Ohio, in which he stated that the applicant has been a hardworking Ghanaian in the Ohio community since 1987, involving herself in regularly mentoring African women, community development, and education projects. This statement is inconsistent with the applicant's statement on her Form I-687 application, at part #31 where she failed to list any affiliations or associations with churches, clubs, or organizations. It is further noted that the applicant at part #30 of her I-687 application indicated that she resided in Chicago, Illinois until 1990. These inconsistencies call into question the affiant's ability to confirm that the applicant resided in the United States during the requisite period. Because this letter contains statements that conflict with what the applicant showed on her Form I-687, doubt is cast on the assertions made. 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. It is incumbent upon the

petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Because the attestation conflicts with other evidence in the record, very minimal weight can be afforded to it in establishing that the applicant resided in the United States during the requisite period.

- An affidavit from _____ in which he stated that he has known the applicant since 1978 when they met at a party in Chicago, Illinois; and that the applicant moved to Columbus, Ohio in 1987 and has since been visiting Chicago. This statement is inconsistent with the applicant's statement on her Form I-687 application, at part #30 where she indicated that she resided in Chicago, Illinois until 1990. This inconsistency calls into question the affiant's ability to confirm that the applicant resided in the United States during the requisite period. Because the attestation conflicts with other evidence in the record, very minimal weight can be afforded to it in establishing that the applicant resided in the United States during the requisite period.

In denying the application the director noted that the evidence submitted by the applicant was insufficient to establish her continuous residence and continuous physical presence in the United States during the requisite periods.

On appeal, counsel asserts that Citizenship and Immigration Services (CIS) used an incorrect standard in determining the applicant's ineligibility. Counsel further asserts that the applicant submitted credible affidavits and evidence sufficient to support her eligibility for temporary residence status. The applicant does not submit any additional evidence on appeal.

Contrary to counsel's claims, the attestations submitted by the applicant conflict with information contained in her Form I-687 application, are lacking in detail, and therefore, cannot be afforded sufficient weight to substantiate the applicant's claim of continuous unlawful residence and continuous physical presence in the United States during the requisite period. Further, the record lacks any other documentation that might lend credibility to the applicant's claim of continuous unlawful residence in the United States for the entire requisite period.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous unlawful 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 inconsistencies between the affidavits and the applicant's statements on her I-687 application, and her reliance upon documents with minimal probative value, it is concluded that she has failed to establish continuous residence in an unlawful status and continuous physical presence 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.