

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

L1

FILE: [REDACTED]
MSC-05-327-11869

Office: NEW YORK

Date: **MAY 13 2009**

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:

[REDACTED]

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.

John F. Grissom
Acting 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 Director, New York, and is now before the Administrative Appeals Office 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 denied the application after determining 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 noted inconsistencies in the applicant's record concerning her residency in the United States and also noted that the applicant had failed to submit evidence to support her claimed absence from the United States from April 1982 to May 1982. The director further noted that two affidavits submitted were not amenable to verification and that a third affidavit was lacking in detail sufficient to support the applicant's claimed eligibility for the immigration benefit sought. 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 inconsistencies found in the record regarding the applicant's residence in the United States were due to typographical errors and that a new affidavit has been submitted to substantiate the accuracy of the information and it is amenable to verification. Counsel further asserts that the applicant has submitted attestations from her mother and her mother's physician in support of her claimed absence from the United States. The applicant submits evidence 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 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).

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) 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; 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 since before January 1, 1982, and throughout the requisite period. Here, the applicant has failed to meet this burden.

In review of the record of proceeding, there does not appear to be any inconsistency in the applicant’s claimed absence from the United States from April 1982 to May 1982. It is also noted that the applicant’s absence does not exceed the 45 day limitation for any single absence outside the United States during the requisite period, and therefore, this portion of the director’s decision will be withdrawn. The AAO will review the remaining evidence to determine the applicant’s eligibility for temporary resident status.

The applicant submitted the following attestations as evidence:

- A declaration from the Senior Pastor of Queens Luso Brazilian Seventh Day Adventist Church in New York in which he stated that the applicant has regularly attended worship services and has participated in church activities from 1981 to 1984. The declarant's statement is inconsistent with the applicant's Form I-687 application, at part #31 where she was asked to list all associations or affiliations with clubs, religious organizations, churches, unions, or businesses, and she indicated "none." In addition, the declaration does not conform to regulatory standards for attestations by churches at 8 C.F.R. § 245a.2(d)(3)(v). Specifically, the declaration does not state the address where the applicant resided during that period, nor does it establish the origin of the information being attested to, and thus its reliability.
- Affidavits from [REDACTED] dated September 22, 2006 and June 3, 2007 in which she stated that the applicant resided with her at [REDACTED] in New York from 1981 to 1994, and from 1995 to 2001. The affiant submitted a copy of a Lease-Renewal Notice for the premises noted above bearing her name and the name [REDACTED] as tenants and dated December 1, 1996. The affiant also submitted a copy of renewal lease agreements dated 2005 and 2007 for the above noted address bearing her name and the name [REDACTED]. The applicant's name does not appear on any of the documents submitted by the affiant. Contrary to counsel's claim that evidence of recent lease agreements suffice to demonstrate that the applicant resided at the above noted address during the requisite period, the documents are insufficient to demonstrate the applicant's presence at the above noted address since before January 1, 1982 and during the requisite period. It is also noted that the affiant's statements are inconsistent with the applicant's Form I-687 application at part #30 where she lists her addresses as [REDACTED] in New York from May 1981 to May 1994, and [REDACTED] in New York from 1995 to 2005.
- An affidavit from [REDACTED] in which he stated that he has known the applicant since 1982 and that she is highly responsible and very dutiful. He also stated that the applicant has been cooperative in caring for his children and running certain errands whenever he asked her for her assistance. Here, the affiant fails to specify the applicant's place of residence or the frequency with which he saw and communicated with the applicant during the requisite period.

In the instant case, the applicant has failed to provide sufficient credible and probative evidence to establish her continuous unlawful residence in the United States since prior to January 1, 1982, and throughout the requisite period. She has failed to overcome the director's basis for denial. The church letter does not conform to regulatory standards. It is also noted that the affiants' statements are inconsistent with the statements made by the applicant in her application. These unresolved inconsistencies and contradictions cast doubt on the applicant's proof. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and

attempts 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 (BIA 1988).

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period and the inconsistencies noted above seriously detract 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 that exist in the record and the general insufficiency of the evidence, it is concluded that the applicant 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.