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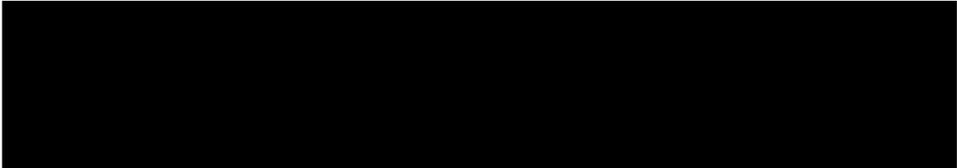
IN RE:

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.

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, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director determined the applicant had not demonstrated that she had continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that she attempted to file a Form I-687, Application for Status as a Temporary Resident, with the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS) in the original legalization application period of May 5, 1987 to May 4, 1988. Therefore, the district director determined that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and denied the application.

On appeal, counsel submits additional evidence relating to the applicant's residence in the United States during the requisite period.

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 Immigration and Nationality Act (Act), 8 U.S.C. § 1255a(a)(2).

An applicant applying for adjustment to temporary resident status must 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).

For purposes of establishing residence and presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the alien attempted to file a completed Form I-687 application and fee or was caused not to timely file, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

An alien applying for adjustment of status 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. See 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.* 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 (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 demonstrate that she resided in the United States from prior to January 1, 1982 through the date she attempted to file a Form I-687 application with the Service in the original legalization application period of May 5, 1987 to May 4, 1988. Here, the submitted evidence is not relevant, probative, and credible.

The record shows that the applicant submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on August 16, 2005. At part #30 of the Form I-687 application where applicants are instructed to list all residences in the United States since first entry, the applicant indicated that she resided at [REDACTED] Hollis, New York” from July 1981 to June 1996. At part #33 of the Form I-687 application, where applicants are instructed to list all employment in the United States since initial entry, the applicant indicated that she had been self-employed since August 1981, but she did not provide any information regarding the nature of her employment.

At her interview with a CIS officer on March 27, 2006, the applicant stated that she initially traveled to the United States from Jamaica by boat and entered without inspection in July 1981. The officer’s notes from the interview indicate the applicant said that she stayed in Miami for one to two weeks and in Ft. Lauderdale, Florida, for one to two months before traveling to New York by bus. She indicated that she resided at [REDACTED] for six or

seven years. This statement contradicts the applicant's statement on the Form I-687 that she lived at that address from July 1981 until 1996, a period of 15 years. The applicant has not provided any explanation for this discrepancy.

When asked if she had left the United States at any time during the period from January 1, 1982 to May 4, 1988, the applicant stated that she returned to Jamaica by boat in September 1987 due to a family emergency and that she returned to the United States by boat. She said that after she re-entered the United States in October 1987 she returned to New York by bus. When she was asked to identify her employer during the requisite period, she stated that she worked for [REDACTED] as a babysitter. She indicated that she received no pay other than room and board in exchange for babysitting [REDACTED]' children.

During the applicant's preliminary legalization interview on December 27, 1990, the applicant told the interviewing officer that she traveled to Miami by car to board a ship bound for Jamaica in 1987. She stated that she and the person who drove her to Miami, whom she did not identify by name, stopped in Jacksonville, Florida, and then in Wilmington and Richmond before entering Florida. The applicant did not identify the states in which Wilmington and Richmond were located.

According to the officer's notes, the applicant stated that when she departed Miami, she didn't tell the driver when she would be back because she had no idea. The officer indicated that the applicant claimed she did not make any phone calls or write any letters to anyone in the United States while she was in Jamaica. The applicant stated that she did not get in touch with the driver to inform him of her return to Miami from Jamaica, but he was there at the port of Miami waiting for her when her boat reached port in Miami. She does not provide the name of the person who met her when she arrived in Miami in October 1987.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted an affidavit dated December 20, 1990 from [REDACTED] [REDACTED] who listed his address as [REDACTED] Hollis, New York," stated that the applicant had lived in his home since July 1981. [REDACTED] provided no information regarding the basis of his acquaintance with the applicant. It is noted that this affidavit is signed [REDACTED] [REDACTED] not [REDACTED]

The applicant submitted a second affidavit dated December 20, 1990, from [REDACTED] in which he stated that the applicant had lived with him in his home since July 1981. He further stated that the rent and household bills were all in his name and the applicant contributed to payment of the rent and household bills. However, [REDACTED] did not provide any information regarding the basis of his acquaintance with the applicant. It is noted that this affidavit is signed [REDACTED] not [REDACTED]

The applicant included a third affidavit from [REDACTED] dated December 20, 1990, in which he stated that the applicant had worked for him since July 1981 and was paid "only \$60.00 per week."

However, [REDACTED] did not provide any information as to the type of work the applicant performed for him. It is noted that this affidavit is also signed [REDACTED]

The applicant also included a fourth affidavit from [REDACTED] [REDACTED] stated in this affidavit that he was the person who drove the applicant from Miami, Florida, to New York via Jacksonville, Florida, Wilmington, and Richmond. He further stated that when he returned, he stopped in Baltimore, Florence, and Daytona Beach, Florida. It is noted that this affidavit too is signed [REDACTED]

Although it appears that [REDACTED] and [REDACTED] are one and the same person, it is not clear why his name appears as both [REDACTED] and [REDACTED]. [REDACTED] failed to identify the dates he drove the applicant from Miami, Florida to New York. It is noted that the applicant indicated during her legalization interview that when she first arrived in the United States, she took a bus to New York. She further stated that when she returned to the United States from Jamaica in October 1987, she once again traveled from Miami to New York by bus. Neither the applicant nor [REDACTED] has provided any explanation for this discrepancy.

The applicant also included an affidavit dated October 22, 1990, from [REDACTED] of Kingston, Jamaica. [REDACTED] stated that that he was the person who picked the applicant up in Miami, Florida, on October 15, 1987, when she returned to Miami after her absence in Jamaica. [REDACTED] further stated, "I was glad to grant my assistance of picking up [REDACTED] at Miami port on October 1987, after being informed by [REDACTED] of her arrival." [REDACTED] provided no information regarding the basis of his acquaintance with the applicant or with [REDACTED]. Furthermore, [REDACTED] indicated in his affidavit that he resided in Kingston, Jamaica, not in the United States. [REDACTED] did not provide any information as to how he happened to be in Miami, Florida, and available to pick the applicant up in Miami, Florida on October 15, 1987.

It is noted that the record contains an affidavit from the applicant dated December 12, 1991. The applicant stated that the officer who conducted her 1990 legalization interview asked her how [REDACTED] knew she was coming to the Miami, Florida. She stated:

I told her I did not know. So I went home and asked [REDACTED] how he knew that I was coming, he told me [REDACTED] called him and told him that I was on my way to Port of Miami.

As previously stated, the applicant, [REDACTED] and [REDACTED] have all made contradictory statements regarding the applicant's trip from New York to Miami and from Miami to New York in 1987. The applicant has not provided any explanation for these contradictions. These contradictions raise serious questions regarding the credibility of the applicant's claim.

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. Further, it is incumbent on 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. (Comm. 1988).

The applicant provided an affidavit dated June 19, 1990, from [REDACTED] [REDACTED] who indicated that she lived in Kingston, Jamaica, stated that the applicant stayed with her in Kingston from September 13, 1987 to October 12, 1987. However, she provided no information regarding the purpose of the applicant's visit to Jamaica or the nature of her relationship with the applicant.

On March 31, 2006, the district director informed the applicant of her intention to deny the Form I-687 application because the affidavits submitted by the applicant in support of her claim were neither credible nor amendable to verification. The district director granted the applicant 30 days to submit additional evidence to corroborate her claim. Counsel, in response, stated:

Please note that [REDACTED] has obtained affidavits of circumstances from family members, relatives and people in general that could state the fact that [REDACTED] was in the USA in the dates the affiants declared she was. . . .

We can state that there is no conflict in the sworn statements given by [REDACTED] but probably a confusion in the data recorded by the Officer during the interview.

The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988). Counsel did not submit any additional evidence to corroborate the applicant's claim of continuous residence in the United States during the requisite period. It is noted that none of the affiants stated that the applicant was a relative or family member. Furthermore, as previously stated, there are numerous contradictions and discrepancies in these affidavits.

On appeal, counsel submits an affidavit dated June 8, 2006, from [REDACTED] currently residing at [REDACTED] Jamaica, New York." [REDACTED] states that the applicant has lived at "[REDACTED] Hollis, New York" since November 1981. [REDACTED] further states, "[t]he rent and household bills were paid by [REDACTED] with the help of [REDACTED]. This statement contradicts the applicant's statement on the Form I-687 that she resided at that address from 1981 to 1996.

Counsel also submits a letter dated June 8, 2006, from the applicant in which she states:

I knew [REDACTED] from Kingston, Jamaica, we used to talk over the phone. One day I ask[ed] him if he could help me to come to [the] U.S.A. I ask[ed] him if I take a boat from Kingston to Miami if he would help me so he send some one to pick me up that is how I came to the U.S.A.

[REDACTED] and I became friends, at that time I could not work, so I start taking care of his three children. He gave me a pocket money on the week ends I could not work because I did not have any kind of papers to work with. When I was living with

█ he always [paid] the rent, phone bill, gas and light bill, reason for that I did not have any kind of papers to work with.”

The applicant’s statement on appeal does not clarify or explain any of the contradictions and discrepancies noted above.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period, and has submitted attestations from only three people concerning that period, all of which lack credibility because of the contradictory statements discussed above.

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 applicant’s contradictory statements on her application during her legalization interview and 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 from prior to January 1, 1982 through the date he attempted to file a Form I-687 application 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.

**ORDER:** The appeal is dismissed. This decision constitutes a final notice of ineligibility.