

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**



Li

FILE:



Office: NEW YORK

Date:

**AUG 13 2007**

MSC 05 319 11475

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, 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, the applicant asserts that she has submitted adequate evidence, both documentary and testimonial, to corroborate her claim to continuous 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 15, 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], Dunellen, New Jersey” from April 1981 to May 1984 and at [REDACTED], Dunellen, New Jersey” from May 1984 to May 1988. At part #32, where applicants are instructed to list all absences outside the United States since initial entry, the applicant indicated that she was in Brazil on an emergency trip from January to February 1984. She further stated that she was in Brazil from December 1987 to January 1988 because her mother was ill.

At her interview with a CIS officer on March 1, 2006, the applicant stated that she first came to the United States in April 1981. When the officer asked the applicant where she lived after she entered the United States, she stated that she lived in Mahopack, New York, for eight years.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted an affidavit dated May 13, 2005, from [REDACTED] [REDACTED] stated that she first met the applicant in February 1986 at a Carnival celebration in Newark, New Jersey. [REDACTED] explained that the applicant was with a group of friends from her neighborhood and she and the applicant were introduced to each other. However, [REDACTED] failed to provide any specific and verifiable testimony, such as the applicant's address(es) of residence in this country, to corroborate the applicant's claim of residence in the United States for that period.

The applicant also submitted an affidavit dated May 12, 2005, from [REDACTED] [REDACTED] stated that he had known the applicant since December of 1987. He explained that he met the applicant through mutual friends at a New Year's Eve party he and his wife were hosting. However, [REDACTED] failed to provide any specific, detailed, and verifiable testimony, such as the applicant's address(es) of residence in this country, to corroborate the applicant's claim of residence in the United States for that period.

The applicant included an affidavit from [REDACTED] [REDACTED] stated that she had known the applicant since June of 1981, when they met at a barbeque party in Newark, New Jersey, given by mutual Brazilian friends. However, [REDACTED] failed to provide any specific, detailed, and verifiable testimony, such as the applicant's address(es) of residence in this country, to corroborate the applicant's claim of residence in the United States for that period. She failed to state how frequently she had contact with the applicant.

The applicant also included a letter dated February 15, 2006, from [REDACTED] of Our Lady of Victory Roman Catholic Church in Mount Vernon, New York. [REDACTED] stated that the applicant was an active member of his parish in the 1980's when he established permanent religious services for Brazilians.

Pursuant to 8 C.F.R. § 245a.2(d)(3)(v), attestations by churches to an alien's residence in the United States during the period in question must: (A) identify the applicant by name; (B) be signed by an official (whose title is shown); (C) show inclusive date of membership; (D) state the address where the applicant resided during the membership period; (E) include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; (F) establishes how the author knows the applicant; and, (G) establishes the origin of the information being attested to. The letter from [REDACTED] does not meet this standard. [REDACTED] does not provide the inclusive dates of the applicant's dates of membership in his church, nor does he provide the addresses where the applicant resided during the membership period.

On March 3, 2006, the district director informed the applicant of her intent to deny the application because the applicant had not provided sufficient evidence to corroborate her claim of continuous residence in the United States during the requisite period. The district director granted the applicant 30 days to submit additional evidence to corroborate her claim. The applicant, in response, submitted a letter dated March 31, 2006, from [REDACTED] [REDACTED] stated that the applicant

began working for him one day a week as a housekeeper at his New York City residence in July 1982. He further stated that the applicant began working for him at his Dutchess County residence, located at [REDACTED], Clinton Corners, New York, in 1988.

Pursuant to 8 C.F.R. § 245a.2(d)(3)(i), letters from employers should be on letterhead stationery, if the employer has such stationery, and must include: (A) the alien's address at the time of employment; (B) the exact period of employment; (C) Periods of layoff if any; (D) Duties with the company; (E) Whether or not the information was taken from official company records; and (F) where records are located and whether CIS may have access to the records. The letter from Dr. [REDACTED] does not meet this standard. [REDACTED] did not provide the applicant's addresses during her employment or the exact period of employment.

Additionally, the applicant provided photos of herself and her husband with a handwritten notation dating them in 1986 and 1987. She also provided photos of herself and her daughters with handwritten notations dating them in 1988, 1989, 1993, 1994, and 2005. The photos are not sufficient to corroborate the applicant's claim of continuous residence in the United States during the requisite period. They contain no details that would date them to a specific month and year. Furthermore, most of the photos are dated after the requisite period, which ended on May 4, 1988.

On appeal the applicant asserts that she has provided sufficient evidence, including very detailed and consistent testimonial evidence, to corroborate her claim of continuous residence in the United States during the requisite period. However, she does not submit any additional evidence to corroborate her claim.

Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

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 five people concerning that 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 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 from prior to January 1, 1982 through the date she 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.