



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



21

FILE: [REDACTED]
MSC-05-152-11342

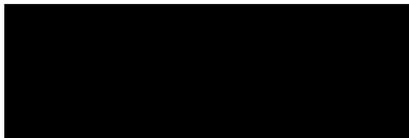
Office: NEW YORK

Date: DEC 17 2007

IN RE: Applicant: [REDACTED]

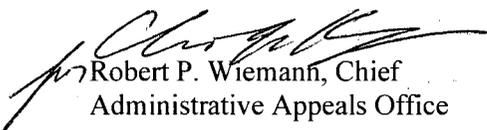
APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the
Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

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 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, on March 1, 2005. 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 as 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, the applicant asserts that the evidence she submitted does establish, by a preponderance of the evidence, that she maintained continuous residence in the United States for the duration of the requisite period. She submits additional evidence in support of her application.

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).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "until the date of filing" shall mean until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file. 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 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. 8 C.F.R. § 245a.2(d)(5).

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 applicant 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 March 1, 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 address in the United States during the requisite period to be [REDACTED] in Brooklyn, New York where she indicated she lived from June of 1981 until June of 1989. It is noted here that the applicant was born in July of 1965 and therefore would have been fifteen (15) years old at the time she began living at this address. At part #32, where the applicant was asked to list all of her absences from the United States, she indicated that she was absent one time during the requisite period, from June until July of 1987. At part #33, where the applicant was asked to list all of her employment since first entering the United States, she indicated that for the duration of the requisite period, she was employed as a freelance housekeeper in Brooklyn, New York from June of 1981 until June of 1989. It is again noted that the applicant would have been fifteen (15) years old at the time she indicated she began doing this work in June of 1981.

The record also contains a photocopy of a Form I-687 submitted to establish class membership in October of 1991. All information regarding the applicant's residence, absences from the United States and employment in the United States is consistent with that same information on the applicant's subsequently filed Form I-687.

The applicant has the burden of proving by a preponderance of the evidence that she has resided in the United States for the requisite period. 8 C.F.R. § 245a.2(d)(5). To meet her burden of proof, an applicant must provide evidence of eligibility apart from her own testimony. 8 C.F.R. § 245a.2(d)(6). The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that an applicant may submit to establish proof of continuous residence in the United States during the requisite period. This list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts or letters. An applicant may also submit any other relevant document pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant first provided the following documentation that pertains to the requisite period:

- A photocopy of a letter from the Bangladesh Society, which states that the applicant has been a member of this organization from May of 1982 until October of 1991. This letter is dated September 16, 1991. The regulation at 8 C.F.R. § 245a.2(d)(3)(v) states in pertinent part that attestations by organizations can be considered credible proof of residence if such documents: identify the applicant by name; are signed by an official whose title is shown; show inclusive dates of membership; state the address where the applicant resided during his or her membership period; include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationary; establish how the author knows the applicant; and establish the origin of the information being attested to. This letter does not establish that the applicant entered the United States before January 1, 1982. Further, it does not note the frequency with which the applicant attended its meetings or whether there were periods of time during which the applicant did not attend meetings. It fails to list an address at which the applicant resided during her membership period or to establish the origin of the membership dates being attested to. Therefore, because this letter is significantly lacking in detail, it can be afforded little weight in establishing that the applicant resided in the United States during the requisite period and because it does not pertain to the duration of the requisite period, it carries no weight in establishing that the applicant continuously resided in the United States for the duration of that time.
- An affidavit from [REDACTED] dated November 10, 2005. In this affidavit, the affiant states that he has known the applicant since 1981. Here, the affiant fails to offer proof that he himself was in the United States during the requisite period. He does not indicate whether there were periods of time during which he did not see the applicant or indicate the frequency with which he did see her during the requisite period. He states that he is friends with the applicant's husband. It is noted that the applicant married her husband in 1990. Because of its significant lack of detail, this affidavit carries little weight in establishing that the applicant resided continuously in the United States for the duration of the requisite period.
- An affidavit from [REDACTED] that is dated December 9, 2005. Here, the affiant states that he met the applicant because her husband worked for his construction company. Here, the affiant does not indicate when he met the applicant, where he met her, or whether he met her in the United States. He does not indicate that he is personally aware of the events and circumstances of her residence in the United States during the requisite period. Therefore, this affidavit carries no weight in establishing that the applicant resided continuously in the United States for the duration of that time.
- An affidavit from [REDACTED] that is dated December 7, 2005. Here, the affiant states that he visited the applicant in 1988. Here, the affiant does not indicate when in 1988 he visited the applicant. Therefore, it cannot be determined if he met her during or after the requisite period. Here, the affiant indicates that he did not know the applicant for the duration of the requisite period. Therefore, this affidavit carries no weight in establishing that the applicant resided continuously in the United States for the duration of that time.
- A photocopy of an envelope that has a postmark that is not clearly legible but appears to be postmarked August 10, 1986. On this envelope appear the applicant's name and the address [REDACTED]. Though this envelope indicates that the applicant received mail on that particular date during the requisite period, it does not carry any weight in establishing that the applicant resided continuously in the United States for the duration of the requisite period.

- A photocopy of a lease agreement for two (2) years that indicates that the applicant, and two other individuals leased [REDACTED] in Brooklyn, New York from August of 1981 to August of 1983. It is noted here that the applicant indicated on her Form I-687 that she lived at this address from June of 1981 rather than from August. It is further noted that the applicant would have been sixteen (16) years old at the time she signed this lease. It is further noted that the applicant's husband's name is on this lease. It is also noted that the applicant and her husband married in 1990. This lease agreement indicates that Carlos Belgrave is the applicant's landlord
- A photocopy of a lease agreement for two (2) years beginning on August 31, 1985 and ending on that same date in 1987. This lease indicates that the applicant and two other individuals leased [REDACTED] in Brooklyn, New York. This lease indicates that [REDACTED] is the applicant's landlord at this address of residence.
- Social Security Administration Statement showing that the applicant worked from 1991-1992 and then from 1996-2004. This Statement does not indicate that the applicant worked from 1981 until the end of the requisite period. Therefore, it carries no weight in establishing that she resided continuously in the United States during that time. It is noted here as the applicant has indicated that she worked from 1981 and then for the duration of the requisite period, yet those earnings are not represented on this statement.

The applicant has also submitted documents issued to the applicant subsequent to May 4, 1988 as well as affidavits from individuals who assert that they did not meet the applicant until after that date. The issue in this proceeding is the applicant's residence in the United States during the requisite time period. Because these documents verify the applicant's presence in the United States subsequent to the requisite time period, they are not relevant evidence for this proceeding.

The director issued a Notice of Intent to Deny (NOID) on February 8, 2006 in which she stated that the evidence submitted by the applicant, when combined with her testimony, were insufficient to establish that she entered the United States on a date prior to January 1, 1982. She went on to say that the evidence was also insufficient to establish that the applicant continuously resided in the United States for the duration of the requisite period. The director granted the applicant thirty (30) days within which to submit additional evidence in support of her application.

In response to the director's NOID, the applicant resubmitted previously submitted affidavits including identity documents for affiant [REDACTED] and a phone number for him. She further submitted a receipt for furniture purchased on New York on March 7, 1983 and a rent receipt for one hundred fifty dollars for the month of September 1981. It is noted that the number of this receipt is [REDACTED] and the individual who signed this receipt is not [REDACTED] the individual who indicated he was the applicant's landlord on the copy of the lease she provided for the corresponding date. She also submitted a photocopy of her Form I-687 signed in 1991 to establish class membership and a legalization front desk questionnaire signed by the applicant on 1999 and a statement that she wrote. In this statement, the applicant asserts that she first entered the United States on June 6, 1981 but that she has misplaced many documents.

In her notice of decision, the director noted that the applicant claimed to have entered the United States in 1981 when she would have been approximately sixteen (16) years of age. The director went on to say that the record did not show that the applicant attended high school in the United States at that time. However, the applicant was later issued an F-1 student visa to attend a university in the United States.

The director found that it would be unlikely that the applicant would have been admitted to a university in the United States if she had not attended high school. The director further noted that affidavits submitted by the applicant were not credible as they did not contain documents identifying the affiants, proof that the affiants were in the United States during the statutory period and proof that there was a relationship between the applicant and the affiants. She stated that the evidence submitted by the applicant was not sufficient to establish that the applicant resided in the United States for the duration of the requisite period. Therefore, she denied the application.

On appeal, the applicant asserts that previously submitted evidence establishes, by a preponderance of the evidence, that the applicant entered the United States before January 1, 1982 and then continuously resided for the duration of the requisite period. She furnishes an additional rent receipt and evidence that affiant Abass Bakarey was present in the United States during the requisite period. Details of evidence submitted with the applicant's appeal are as follows:

- A photocopy of a rent receipt dated August 15, 1981. The serial number on this rent receipt is [REDACTED]. This receipt indicates that the applicant paid an individual who appears to be [REDACTED] one hundred fifty (150) dollars for rent for the month of August 1981. It is noted here that the individual who indicated he was the applicant's landlord at that time was [REDACTED]. The lease agreement indicates that the applicant began living at the address for which she paid rent on August 15, 1981, that there were three (3) individuals living at that address and that the total rent was three hundred (300) dollars. It is also noted that the applicant indicated on both Forms I-687 that she began residing at this address in June rather than in August of 1981.
- A photocopy of a rent receipt dated September 5, 1981. The number on this receipt is [REDACTED]. This receipt indicates that the applicant paid an individual who appears to be [REDACTED] one hundred fifty (150) dollars for rent for the month of September 1981. This receipt was previously submitted.

Though both copies of rent receipts show that the applicant paid rent in 1981, they alone do not establish that the applicant continuously resided in the United States for the duration of the requisite period. The absence of a lease for the years 1983-1985, the fact that the landlord's name is not seen on these receipts and the fact that, though the applicant was a minor when she entered the United States, no adult who was responsible for her care has submitted evidence all cast doubt on the credibility of the applicant's claim of having maintained continuous residence for the duration of the requisite period.

- A photocopy of a diploma that indicates that [REDACTED] was awarded an Associates Degree on June 20, 1980. While this degree does indicate that an affiant from whom the applicant submitted an affidavit was present in the United States before the requisite period began, it does not establish that he was present in the United States for the duration of the requisite period, nor does it carry any weight in establishing that the applicant resided continuously in the United States for the duration of the requisite period.

As is stated above, 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. at 79-80. The applicant has been given the opportunity to satisfy her burden of proof with a broad range of evidence pursuant to 8 C.F.R. § 245a.2(d)(3). However, here, only one affiant, [REDACTED] claims to have known the applicant for the duration of the requisite period. He has not indicated on his affidavit whether there were periods of time

during which he did not see the applicant nor did he indicate the frequency with which he saw her during the requisite period. His affidavit was significantly lacking in detail. The applicant has submitted two leases, but they do not span the duration of the requisite period. The applicant has indicated that she began residing at the address shown on the leases in June of 1981, yet the leases she submitted indicate that she did not begin residing there until August of that year. She has submitted two rent receipts signed by an individual who is not indicated as her landlord on the leases she submitted. Though the applicant would have been fifteen (15) years old at the time she began residing in the United States, she has not submitted any documents from an individual who was responsible for her care when she entered the United States.

The absence of sufficiently detailed 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 that do not pertain to the duration of the requisite period and have 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.