



U.S. Citizenship  
and Immigration  
Services

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[Redacted]

FILE: [Redacted] MSC 05 284 12063

Office: NEW JERSEY

Date: DEC 26 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:

[Redacted]

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 Jersey, and 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 for the applicant asserts that the applicant was unaware of her burden of proof and the documentation necessary to support her claim because she was not represented by counsel. An additional declaration from the applicant is submitted in support of the appeal, which is also accompanied by photocopies of previously submitted documents to be discussed below.

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). 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).

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.

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.* 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 during the requisite time period. The record shows that the applicant did not submit documentation in support of her completed Form I-687. Accordingly, following the applicant's legalization interview, Citizenship and Immigration Services (CIS) issued a request for additional evidence (RFE) dated November 28, 2005. The applicant was allowed 90 days in which to provide further evidence of her residence during the requisite time period as well as evidence that any affiants attesting to the applicant's residence also establish their residence in the United States during the relevant time period.

In response, the applicant provided an affidavit dated December 12, 2005 from [REDACTED] the applicant's aunt. The affiant stated that the applicant first came to the United States in December 1981 and claimed that the applicant resided with her and her husband, another of the applicant's uncles, when she came to the United States in April 1986. The affiant also implied that the applicant departed the United States and returned in September 1986 at which time she again resided with the affiant and her family. The applicant also submitted photocopies of her visa pages, which show that she was according status as a student in the F-1 visa category in 1986.

On April 28, 2006, the director issued a notice of intent to deny (NOID) informing the applicant that the single affidavit the applicant submitted in response to the RFE was insufficient for the purpose of establishing eligibility to adjust her status to that of a temporary resident. The director also commented on the lack of school records despite the fact that the applicant was of school age at the time of her purported entry to the United States in 1981.

In response, the applicant submitted a court document showing the above affiant's petition to change her name from [REDACTED] to that of [REDACTED]. The applicant also submitted contemporaneous documentation establishing the affiant's residence in the United States during the

statutorily relevant time period. It is noted that the applicant did not provide any further evidence of her own residence in the United States during the same time period.

Accordingly, upon further review of the documentation submitted thus far, the director issued a denial on July 12, 2006, concluding that the applicant failed to provide sufficient evidence to establish that she had resided in the United States continuously in unlawful status during the entire requisite time period.

On appeal, counsel suggests that the applicant's lack of legal counsel contributed to her failure to provide sufficient documentation to support her claim. However, the applicant was free to obtain counsel to assist her with the legalization process. Her choice not to obtain legal counsel has no bearing on CIS's evaluation of the applicant's eligibility. Furthermore, the AAO notes that even after having obtained counsel to represent her in the appeal process, the only additional documentation the applicant provided in support of her claim is her own sworn statement dated August 11, 2006. However, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The applicant was specifically notified, on more than one occasion, that she must furnish evidence in support of her claim. While the applicant admittedly furnished contemporaneous documentation establishing her 1986 entry into the United States, without further evidence to show that this was merely a continuation of a prior unlawful stay, the applicant's visa pages merely show that she legally entered the United States in 1986 in the F-1 visa classification.

Furthermore, neither the applicant in her own sworn statement nor the affiant, whose affidavit was discussed previously, clearly indicate that the applicant continuously resided in the United States since her alleged 1981 arrival. Rather, careful review of the applicant's statement suggests that she may have entered the United States prior to January 1, 1982 with her uncle and remained in the United States for the duration of her vacation after her uncle's premature departure back to Nigeria. The applicant's following statement (No. 6) clearly indicates that the applicant returned to Nigeria, after her vacation was over, and continued to reside there with her uncle. The applicant suggests that she only returned to the United States after having been admitted to North Eastern Christian Junior College in 1986. Similarly, the applicant's aunt, the affiant named above, also discussed the applicant's initial entry to the United States in 1981 and her subsequent entry in April 1986. Neither the applicant nor the affiant specifically claimed that the applicant remained in the United States continuously from January 1, 1982 until April 1986. In fact, the only indication that the applicant made the claim at all is in No. 30 of her Form I-687 where the applicant provided a U.S. address from December 1981 to April 1986. However, as noted above, this claim remains entirely unsupported by documentary evidence.

In summary, 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 inconclusive statements and her reliance upon a single document with minimal probative value, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States

during the entire statutory period as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E-M-*, 20 I&N Dec. 77. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

Additionally, while not specifically discussed in the director's decision, even if the applicant claimed and provided evidence of her unlawful residence in the United States during the requisite period, the five-month long absence, which she readily acknowledged in No. 32 of her Form I-687, would preclude her from establishing eligibility for adjustment to temporary resident status. An alien shall be regarded as having resided continuously in the United States if at the time of filing an application for temporary resident status, no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, through the date the application is filed, unless the alien can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the alien was maintaining residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.1(c). There is no evidence that the applicant's absence was for any purpose other than pleasure or that her untimely return to the United States was due to an "emergent reason." See *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), defining emergent as something "coming unexpectedly into being." Therefore, the AAO cannot deem the applicant's residence as continuous.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis). Therefore, the applicant's prolonged absence serves as a contributing factor precluding the applicant from being able to establish continuous unlawful residence in the United States during the requisite statutory time period,

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