



U.S. Citizenship  
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Services

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FILE:

[REDACTED]

Office: NEW YORK

Date:

APR 16 2008

MSC 06 033 12208

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 National Benefits Center. If your appeal was sustained, or if the matter 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. The appeal will be dismissed.

The district director denied the application because the applicant failed to demonstrate credibly that she entered the United States before January 1, 1982, and thereafter resided in a continuous unlawful status, and because she failed to demonstrate credibly that she was continuously physically present in the United States since November 6, 1986.

On appeal, counsel submitted a brief and additional evidence.

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 was filed. Section 245A(a)(2) of the Immigration and Nationality Act (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 confirm 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).

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)(1) 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. CSS Settlement Agreement, paragraph 11 at page 6; Newman Settlement Agreement, paragraph 11 at page 10.

As to the requirement of continuous residence in the United States from January 1, 1982 through the date the application is filed, the regulation at 8 C.F.R. § 245a.2(h)(1) provides that an applicant shall be regarded as having resided continuously if no single absence during the salient period was longer than 45 days and the aggregate of all absences does not exceed 180 days.

As to continuous physical presence since November 6, 1986, section 245A(a)(3) of the Act, 8 U.S.C. § 1255a(a)(3) states, “[a]n alien shall not be considered to have failed to maintain continuous physical presence in the United States . . . by virtue of brief, casual, and innocent absences from the United States.”

The applicant has the burden of proving by a preponderance of the evidence that he or she resided continuously in the United States from January 1, 1982 until he or she filed his or her application, was continuously physically present in the United States from November 6, 1986 until the date of filing the

application, 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.2(d)(6).

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 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 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.

The applicant signed the instant Form I-687 application on September 26, 2005 and submitted it on November 2, 2005. In her application the applicant stated that she lived at [REDACTED] Brooklyn, New York, from November 1981 to July 1984; at [REDACTED] Brooklyn, New York, from July 1984 to October 1990; and from 1990 to "Present" (September 26, 2005) at [REDACTED] Brooklyn, New York.

She further stated that during the period from January 1, 1982 to May 4, 1988 she left the United States on two occasions, in both cases to go to Jamaica. The applicant stated that she went to visit her family from December 28, 1985 to January 9, 1986, and went to visit her ill father from April 7, 1987 to April 28, 1987. The applicant reiterated the dates and purpose of her 1987 absence on her LULAC Class Member Declaration, dated April 8, 1991. Finally, the applicant stated that she last entered the United States on January 15, 1990.

At her interview the applicant stated that she first entered the United States during November 1981 by airplane at Miami, Florida. She stated that she had lost the passport that would show that entry.

She stated that she had worked as a nurse's aide and was paid in cash, had no hospital, dental, or medical records, and no rent receipts or utility bills.

The record contains:<sup>1</sup>

- an employment verification letter from Ideal Health Care Agency, Inc., dated February 11, 1986;
- registered mail receipts, dated June 24, 1986 and July 21, 1986;
- an Express Mail receipt, dated March 17, 1986;
- photocopies of bank statements, cancelled checks and checking account and savings account deposit and withdrawal slips;
- funds transfer and money order receipts;
- photocopies of ATM cards issued by Marine Midland bank and Republic National Bank;
- a photocopy of a certificate in Nurse's Aide Training from the Municipal Training Center, dated January 18, 1982;
- photocopies of registered mail receipts;
- an Affidavit of Residence from [REDACTED], dated October 21, 1990;
- two form affidavits, from [REDACTED] and [REDACTED], both dated July 12, 1991;
- a letter dated August 14, 2005 from [REDACTED] of Orlando, Florida;
- a notarized letter, dated August 15, 2005, from [REDACTED] of Plantation, Florida;
- a letter dated August 29, 2005 from [REDACTED] of Yonkers, New York;
- a notarized letter dated September 23, 2005 from [REDACTED] of Melbourne, Florida; and
- a notarized letter dated March 8, 2006 from [REDACTED] of Miami, Florida.

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<sup>1</sup> The various letters and affidavits attesting to the applicant's residence in the United States were accompanied by other documents tending to show that the authors lived in the United States during at various times.

The record contains no other evidence pertinent to the applicant's continuous residence or continuous physical presence in the United States during the salient periods.

The February 11, 1986 employment verification letter is from an assistant manager at Ideal Health Care Agency, Incorporated in Brooklyn, New York. That letter states that the applicant worked for that company from February 1982 to December 1985 as a nurse's aide.

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers should be on letterhead, if the employer has such stationery, and must include the alien's address at the time of employment, the exact period of employment, periods of layoff, the duties of the alien with respect to that employment, whether the information was taken from official company records, where those records are located, and whether CIS may have access to those records. If employment records are unavailable, the employer must state, in a signed affidavit attested to under penalty of perjury, that they are unavailable, why they are unavailable, and that the employer is willing to testify.

The February 11, 1986 employment verification letter is on letterhead, although it may be computer generated. It does not include the applicant's address at the time of her alleged employment, the exact date the employment commenced and ended, periods of layoff. It does not state whether the information pertinent to the applicant's employment was taken from company records. It does not state where those records are and whether they are amenable to inspection, as it is required to do if the information was taken from company records. It does not comply with the requirement that, if the company's records are unavailable, that this be stated in a sworn affidavit, along with why they are unavailable and whether the employer is willing to testify.

The February 11, 1986 letter does not correspond to the requirements of 8 C.F.R. § 245a.2(d)(3)(i), and will therefore be accorded considerably less evidentiary weight than a conforming employment verification letter would have been accorded. However, it remains a document relevant to whether the applicant resided in the United States during the requisite period, and will be considered pursuant to 8 C.F.R. § 245a.2(d)(3)(v)(L).

The Express Mail receipt shows that the applicant sent mail from Brooklyn, New York on March 17, 1986.

The checking account and savings account deposit and withdrawal slips and cancelled checks show activity related to the applicant's bank accounts on over 70 occasions from February 7, 1986 to June 17, 1988. The bank statements show the activity related to the applicant's checking account during January 1988.

The Funds Transfer Receipts show that on October 27, 1986 and November 5, 1986 the applicant sent remittances from Brooklyn, New York, to Jamaica. The Money Order receipts show that the applicant sent other remittances on October 14, 1987 and December 23, 1988.

A photocopied Marine Midland Bank ATM card was issued to the applicant. It expired during August 1986. The date of issue is unknown to this office, though, obviously, it preceded August

1986. This office takes notice that Marine Midland's headquarters was then located in Buffalo, New York. The Republic National Bank does not specify when it was issued or when it expired.

The Nurse's Aide Training certificate indicates that the Municipal Training Center, New York, issued it to the applicant on January 18, 1982. That certificate contains no contact information to use in verifying its authenticity.

The registered mail receipts show that on June 24, 1986 and July 21, 1986 the applicant sent registered mail to an address in Independence City in Jamaica.

The October 21, 1990 Affidavit of Residence is from [REDACTED] and states that the applicant lived with her at [REDACTED] in Brooklyn from July 1984 until 1990. A preprinted portion of that form states, "The rent receipts and household bills are in my name and the application (sic) contributes toward the payment of the rent and household bills."

The August 15, 2005 letter of [REDACTED] states that the writer has known the applicant for over 25 years, having met her in 1979, and that the writer and the applicant migrated to the United States during 1980.

The first paragraph of [REDACTED] August 14, 2005 letter reads,

This is to certify that I have known [REDACTED] for the past twenty years. We met when I was a pastor in Jamaica, West Indies. In 1980, we met again in Brooklyn, New York, where [REDACTED] resided.

This office notes that, if, on the date of that letter the writer had known the applicant for twenty years, then they first became acquainted during 1985. The letter states, however, that they had met in Jamaica, and then re-established their acquaintanceship in 1980 in Brooklyn. Further, the applicant does not claim to have entered the United States until November 1981, and would not, therefore, have been present in Brooklyn during 1980.

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, the applicant must resolve any inconsistencies in the record with competent, independent, objective evidence. Attempts to explain or reconcile such inconsistencies, absent competent objective evidence sufficient to demonstrate where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (Comm. 1988).

With no reconciliation of the applicant's claim of residence and presence in the United States and the contradictory history contained in the August 14, 2005 letter of [REDACTED] which the applicant submitted to support her claim of eligibility, the credibility of all of the evidence submitted in this matter suffers.

One July 12, 1991 form affidavit is from [REDACTED] of the Bronx. In it, she repeated the residential history that the applicant reported on the instant Form I-687. She also stated, "I see her very often within the given period."

The other July 12, 1991 form affidavit, from [REDACTED] gives the same residential history, except that it states that the applicant lived at [REDACTED] from July 1984 to "Present" (July 12, 1991). That assertion differs from the version of the applicant's residential history the applicant reported in the instant Form I-687, in which the applicant stated that she lived at [REDACTED] in Brooklyn, from July 1984 to October 1990, and then moved back to [REDACTED]. That the information reported in this affidavit differs from that provided by the applicant damages the affidavit's credibility and also further damages the credibility of the other evidence in the record.

The August 29, 2005 letter of [REDACTED] is similarly internally inconsistent. The first paragraph of that letter states,

This is to advise that I have known A [REDACTED] for the past twenty-two years. I met her in Kingston, Jamaica West Indies in 1979 and we have remained friends. I immigrated to the USA in 1980 and she arrived soon after.

Again, if the writer had known the applicant for 22 years on the date of that letter, then they met in 1983, rather than 1979.

The September 14, 2005 letter of [REDACTED] states,

Please be informed that the above mentioned person have been known to me for thirty two years (32) we became acquainted in Kingston Jamaica in 1970 . . . ."

[Errors in the original.]

This office notes, again, that the arithmetic is wrong. If the letter was written during 2005, and the writer and applicant became acquainted during 1970, then they had, at the time of that writing, known each other for approximately 35 years.

That letter further states,

In 1978 I migrated to the United States our friendship remains intact I would call weekly giving up dates on the great America and Asneth [sic] would call as well. In the early 1980s she visited United States for her vacation then return to Jamaica. She returned again at which time she decided to stay. We lived in New York City nothing changed between us. We went shopping visited church service, broad way shows, attend barbecues and bus rides. In 1981 I left New York to reside in Miami Florida . . . ."

[Errors in the original.]

The chronology urged by that letter is that the applicant visited the United States sometime during the early eighties, returned to Jamaica, then came back to the United States again and decided to stay. The affiant failed to specify the month and year the applicant first resided in New York. The letter further urges that the applicant and the writer lived in New York and had time to enjoy various recreational activities together, and that when the writer subsequently moved to Florida, it was still 1981. As was noted above, the applicant claims to have first entered the United States during November of 1981, with a maximum of two months of that year remaining. Although the chronology urged in this paragraph may be arithmetically possible, unlike the first paragraph of the letter, it appears to compress considerable activity into the last two months of 1981.

In a Notice of Intent to Deny (NOID), dated May 17, 2006, the director noted that the applicant had produced no evidence in support of her claim that she initially entered the United States during November 1981. The director stated that the applicant had failed to submit credible and verifiable evidence demonstrating her continuous unlawful residence and continuous physical presence in the United States during the requisite periods. The director indicated that CIS intended, therefore, to find the applicant ineligible for temporary resident status pursuant to Section 245A of the Act. The applicant was accorded 30 days to respond to that notice.

In response, the applicant submitted some of the evidence described above. In the Notice of Decision, dated June 21, 2006, the director denied the application based on the reasons stated in the NOID, that is the applicant's failure to demonstrate her continuous residence and continuous physical presence in the United States during the requisite periods prescribed by sections 245A(a)(2) and 245A(a)(3) of the Act. The director found that the applicant's claim of continuous residence and presence in the United States is inconsistent with arrival and departure records.

On appeal, counsel urged that the evidence submitted is sufficiently amenable to verification and sufficiently credible to demonstrate the applicant's eligibility.

One issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate continuous unlawful residence in the United States during the requisite period.

Another issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that she was continuously physically present in the United States since November 6, 1986, excepting brief, casual, and innocent absences pursuant to 245A(a)(3) of the Act, 8 U.S.C. § 1255a(a)(3).

The evidence in this case presents a striking dichotomy. The record is ripe with contemporaneous evidence of the applicant's residence and presence in the United States from February 1986 forward. The record contains various bank documents, Express Mail receipts, Money Order receipts, fund transfer receipts, and registered mail receipts all tending to show that the applicant was present and residing in the United States beginning in February 1986.

The evidence that the applicant was present and residing in the United States prior to February 1986, however, is quite different. As to that period, the applicant provided no bank documents or receipts. Rather most of the evidence of the applicant's presence and residence in the United States was clearly produced later, specifically for the purpose of supporting the instant application.<sup>2</sup>

The letters and affidavits, for instance, are not contemporaneous evidence of residence and presence in the United States. Rather, they were produced after the fact to serve as support for the instant application. Absent contradictions and inconsistencies, such evidence is not inherently suspect.

As was noted above, the form affidavit of residence from [REDACTED] states that the applicant lived with the affiant from July 1984 until 1990, and a preprinted portion of that form states, "The rent receipts and household bills are in my name and the application (sic) contributes toward the payment of the rent and household bills." That a quantity of identical forms was printed with a space for affiants to sign attesting to identical facts does not suggest that the affiant's unique stories were transcribed. Rather, it suggests a one-size-fits-all history of residence that may or may not, in an individual case, be factual. Such a form affidavit, with pre-printed facts to be attested to when it was handed to the affiant, is inherently suspect. Therefore this affidavit will be accorded less evidentiary weight.

Many of the other affidavits, those that were apparently individually typed, rather than mass-produced, lack detail. [REDACTED], and [REDACTED] all claim to have known the applicant for over 20 years, to be close friends, and to be able to verify her claim of residence and physical presence in the United States, but they do not state whether their contacts with the applicant during the requisite periods were typically daily, weekly, or monthly or even whether they were typically in person, by telephone, or by mail.

Yet further inconsistencies exist. The affidavit from [REDACTED] contains a residential history that differs from that asserted by the applicant. The affidavit from [REDACTED] asserts that the applicant entered the United States prior to the date that the applicant claims to have entered.

Further still, as was noted above, the credibility of the employment verification letter from Ideal Health Care Agency suffers because the letter does not conform to the requirements of 8 C.F.R. § 245a.2(d)(3)(i). For all of those reasons, the credibility of all of the letters, affidavits, and other evidence in the record is severely compromised.

The sole item that purports to be contemporaneous evidence of the applicant's presence in the United States prior to February 1986 is the January 18, 1982 Nurse's Aide Training certificate

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<sup>2</sup> The sole exception is the Nurse's Aide Training certificate, which purports to have been issued to the applicant on January 18, 1982, and purports to show training received in the United States immediately prior to that date.

purportedly issued by the Municipal Training Center.<sup>3</sup> Because of the myriad inconsistencies, contradictions, and suspicious circumstances of the affidavits submitted, this evidence, too, will be subjected to additional scrutiny.

This certificate indicates that the applicant completed 90 hours of training. Therefore this certificate is only evidence of the applicant's residence in the United States as of January 1982. The applicant has not provided any evidence of her residence in the United States immediately subsequent to that date.

Moreover, the applicant's record shows that during her February 12, 1992 interview for determination of her LULAC class membership she testified that she legally entered the United States on November 5, 1981 as a B2 visitor and then returned to Jamaica after six months, which would have been during May of 1982. This testimony is inconsistent with her Form I-687 application. Part 32 of that application states that, since January 1, 1982, the applicant left during 1985, 1987, 1988, and 1990. It shows that she did not leave at any time during 1982.

Again, pursuant to *Matter of Ho*, 19 I&N Dec. 582, this discrepancy, absent reconciliation with objective evidence, casts doubt on the reliability of the applicant's assertions and evidence.

This office finds that the applicant has demonstrated, with voluminous, credible, verifiable, reliable, contemporaneous evidence, that she was physically present in the United States from February 1986 until she filed her initial Form I-687 application, on some date between May 5, 1987 to May 4, 1988.<sup>4</sup> The applicant has therefore satisfied the requirements of section 245A(a)(3) of the Act and overcome that basis of the decision of denial.

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<sup>3</sup> As was noted above, that certificate contains no contact information for the institution that awarded it. That certificate does, however, state that the institution was licensed by the New York State Education Department. In an effort to verify the information contained on that certificate, this office conducted a google search of web content. No website for that the Municipal Training Center was located. Further, [http://www.highered.nysed.gov/bpss/municipal\\_closure100505.htm](http://www.highered.nysed.gov/bpss/municipal_closure100505.htm), a site maintained by the New York State Education Department, contains a reproduction of a letter that appears to indicate that the institution closed during or about October 2005. The contents of that letter are not, therefore, verifiable, and given the apparent misstatements contained in the balance of the evidence provided, this office finds that the assertion that the applicant attended that institution during 1982 is also suspect.

<sup>4</sup> In fact, whether the applicant actually filed or attempted to file a Form I-687 between those dates is open to question. At her interview the applicant was asked "Did you physically tender an application for the Amnesty Program that began on May 5, 1987 through May 4, 1988?" The notes from that interview indicate that the applicant responded that she never tried to apply. However, this issue was not raised in the decision of denial, is not relevant to any fact material to today's decision, and forms no part of the basis of today's decision.

However, the applicant has not credibly demonstrated that she was in the United States at any time prior to February 1986. The applicant has not, therefore, sustained her burden of establishing continuous unlawful residence in the United States from prior to January 1, 1982 until the date she filed her application. The application was correctly denied on that basis, which basis has not been overcome on appeal.

In legalization proceedings, the burden of proving eligibility for the benefit sought remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. The appeal will be dismissed.

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