

identifying data deleted to
prevent class by unwarranted
invasion of personal privacy

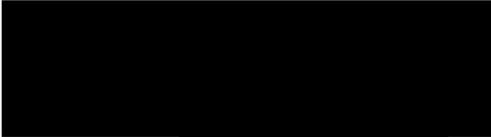
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

L1

PUBLIC COPY



FILE: [Redacted]
MSC-05-253-15699

Office: New York

Date: FEB 22 2008

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: 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 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. 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, the applicant asserts that she meets all of the criteria and conditions of eligibility under the provisions of the law and does not submit any 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 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).

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.

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.* 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 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, 431 (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 for the duration of the requisite period. Here, the submitted evidence is not relevant, probative, or credible.

The record shows that the applicant submitted a Form I-687 Application and Supplement to Citizenship and Immigration Services (CIS) on June 10, 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 listed her first three addresses in the United States as Bronx, New York, from December 1981 to April 1986. At part #33, she listed her first and only employment in the United States as a self-employed hair dresser in New York, New York, from May 1987 to the present.

On November 15, 2005, the Director of the Missouri Service Center issued a notice of intent to deny (NOID) the applicant’s Form I-687 application. In response to the NOID, the applicant submitted the following documentation:

- A notarized affidavit dated December 1, 2005 from [REDACTED] a United States citizen. [REDACTED] states that she has known the applicant “in this country” since

December 1981 when she “first did her hair.” She adds that she has “continued doing her hair regularly until now” and has “maintained a fairly good relationship with her since that time.” The declarant does not state whether she had direct, personal knowledge of the address at which the applicant was residing in 1981; the affidavit lacks any details that would lend credibility to a 24-year relationship with the applicant; and it is not accompanied by any evidence that [REDACTED] resided in New York during the relevant time period. Given these deficiencies, this statement has minimal probative value in supporting the applicant's claim of her continuous residence in the United States since a date prior to January 1, 1982.

A notarized affidavit dated November 30, 2005, from [REDACTED] a United States citizen. states: “I hereby confirm that I have known [REDACTED] since the middle of December, 1981 in this country. I used to attend informal Ghanaian political and social gatherings with her and other Ghanaians.” Again, the declarant does not state whether he had direct, personal knowledge of the address at which the applicant was residing in 1981; the affidavit lacks any details that would lend credibility to a 24-year relationship with the applicant; and it is not accompanied by any evidence that [REDACTED] resided in New York during the relevant time period. The declarant does not indicate under what circumstances he met the applicant in 1981, how he dates his acquaintance with the applicant, or how frequently he had contact with the applicant. Given these deficiencies, this statement has minimal probative value in supporting the applicant's claim of her continuous residence in the United States since a date prior to January 1, 1982.

In addition, the record of proceeding contains an affidavit from [REDACTED]

Church Pastor of the First Ghana Seventh-Day Adventist Church. [REDACTED]s affidavit is printed on church letterhead and is dated March 10, 2006. [REDACTED] states that the applicant is one of his parishioners and that he has known the applicant “for some time.” In a second NOID dated April 6, 2006, the director of the New York District notes that the applicant did not list any affiliations or associations at part #31 of the Form I-687 and therefore, determined that [REDACTED]s affidavit was void of probative value. [REDACTED]s affidavit does not provide any dates or addresses in support of the applicant’s claim of her continuous residence in the United States since a date prior to January 1, 1982.

The record of proceeding also includes an employment verification letter dated March 6, 2006 and signed by [REDACTED], president of Concept: CARE. [REDACTED] states that the applicant been employed by Concept: CARE as a home health aide since December 8, 2005. Although the statement is on company letterhead, it is not notarized. It also fails to meet certain regulatory standards set forth at 8 C.F.R. § 245a.2(d)(3)(i), which provides that letters from employers must include the applicant’s address at the time of employment; exact period of employment; whether the information was taken from official company records and where records are located and whether CIS may have access to the records; if records are unavailable, an affidavit form-letter stating that the employment records are unavailable may be accepted which shall be signed, attested to by the employer under penalty of perjury and shall state the

employer's willingness to come forward and give testimony if requested. The statement by Ms. [REDACTED] does not include much of the required information and does not establish the applicant's claim of her continuous residence in the United States since a date prior to January 1, 1982.

Finally, the record of proceeding includes a letter from the applicant in which she explains that she did not attend school in the United States and that, culturally, it is not uncommon for African women to not attend school. However, in the same letter she stated that she attended school "back home for 5 years before dropping out." The applicant does not explain how it is both culturally acceptable for her to attend school in Ghana and not attend the public schools in the United States. Simply going on record without supporting documentary evidence is not sufficient for the purpose 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 director denied the application for temporary residence on August 1, 2006. In denying the application, the director found that the applicant failed to establish that she entered the United States prior to January 1, 1982 or that she met the necessary residency or continuous physical presence requirements. Thus, the director determined that the applicant had failed to meet her burden of proof by a preponderance of the evidence.

On appeal, the applicant asserts that she was not able to submit documentary evidence of her unlawful presence due to the "passage of time." The applicant did not submit any additional evidence on appeal.

In summary, the applicant has not provided any evidence of residence in the United States relating to the period from 1982 to 1988 or of entry to the United States before January 1, 1982. The statements and affidavits provided lack credibility and probative value for the reasons noted.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, as noted in the record, seriously detracts from the credibility of her 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 lack of credible supporting documentation, it is concluded that she has failed to establish by a preponderance of the evidence that she has continuously resided in an unlawful status in the United States for the requisite period 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.