

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



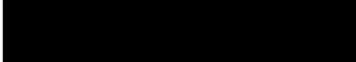
U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**



LI

FILE:



MSC-05-222-10649

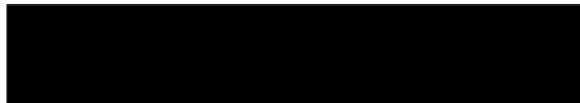
Office: MIAMI, FL

Date:

**JAN 02 2008**

IN RE:

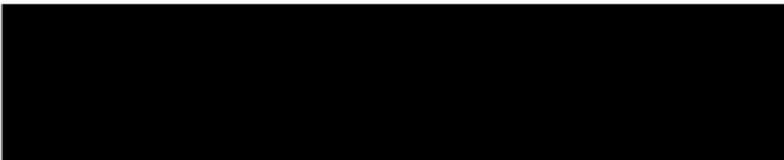
Applicant:



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:



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 "R. 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 Acting District Director, Miami, Florida. 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. In her Notice of Intent to Deny (NOID), the Acting Director stated that though the applicant claimed to have entered the United States before January 1, 1982 and then to have resided continuously for the duration of the requisite period, she did not submit evidence in support of her claim. The Acting Director granted the applicant thirty (30) days within which to submit additional evidence in support of her application. Though the Acting Director noted that the applicant did submit additional evidence in response to the NOID, she stated that this evidence was not sufficient to overcome her reasons for denial. She 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 submitted affidavits in support of her application and that the director erred in determining that these affidavits were not sufficient to meet the applicant's burden of proof.

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).

An applicant shall be regarded as having resided continuously in the United States if, at the time of filing no single absence from the United States has exceeded forty-five (45) days and the aggregate of all absences has not exceeded one hundred eighty (180) days between January 1, 1982 and the date of filing his or her

application for Temporary Resident Status unless the applicant establishes that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed. 8 C.F.R. § 245a.2(h)(1)(i).

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 (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, 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 Citizenship and Immigration Services (CIS) on May 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 showed her addresses in the United States during the requisite period to be: [REDACTED] in Sunrise, Florida where she lived from August 1981 until August 1987; and [REDACTED] in Lauderhill, Florida from August 1987 until February 1990. At part #32 where the applicant was asked to list all of her absences from the United States, she showed that during the requisite period, she was absent from the United States when she went to Jamaica four (4) times; in June 1982 when she went to visit her family; from February to April 1983 when she went to give birth; from December 1983 until January 1984 when she went to visit her baby; and then from July to August 1984 when she went to visit family. At part #33, where the applicant was asked to list all of her employment in the United States since she first entered, she showed her employment in the United States during the requisite period to be as a housekeeper for [REDACTED] in Lauderdale Lakes, Florida from November 1981 until March 1987 and then as a housekeeper for [REDACTED] in Sunrise, Florida from March 1987 until February 1992.

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 submitted the following documents that are relevant to the requisite period with her Form I-687:

- An affidavit from [REDACTED] Dated May 2, 2005. In this affidavit, the affiant states that he knows that the applicant migrated to the United States in August 1981. He goes on to say that he knows this because she mentioned in a letter that she was migrating to live in Florida. The affiant provides addresses at which he states the applicant lived during the requisite period that are consistent with the addresses that the applicant showed on her Form I-687. While the affiant, who first met the applicant in Jamaica, has provided addresses where he states the applicant lived during the requisite period, as he stated that the applicant wrote to him to tell him that she was immigrating to the United States. This suggests that he was not in the United States at the time that the applicant first immigrated. The affiant has failed to state or to submit proof that he himself was present in the United States at any point during the requisite period. Therefore, he has not established that the events and circumstances of her residence during the requisite period are personally known to him. Because the affiant is not attesting to events and circumstances personally known to him, this affidavit carries very minimal weight in establishing that the applicant resided in the United States during the requisite period.
- Affidavits from [REDACTED], and [REDACTED], dated April 28, April 28 and April 29 of 2005 respectively. These affiants all list the applicant's addresses of residence and details of her employment consistently with what the applicant showed on her Form I-687. Here, [REDACTED] indicates that she has known the applicant for many years. However, she does not indicate when and where she met the applicant or whether she knew her in the United States during the requisite period. [REDACTED] indicates that he has known the applicant since he moved to Florida. However, he does not indicate when he moved to Florida or state whether he met the applicant during or after the requisite period. Though [REDACTED] indicates that she shared a residence at one time with the applicant, she does not indicate where this residence was or when she shared it with the applicant. She does not indicate whether this residence is in the United States or whether she knew the applicant in the United States during the requisite period. None of these affiants provide a telephone number at which they can be reached to verify information in their affidavits. Therefore, these affidavits are not amenable to verification. Because these three (3) affiants have not established whether they were in the United States during the requisite period, they have not established that they were personally aware of the events and circumstances of the applicant's residence during that time. Therefore, their affidavits can be afforded no weight in establishing that the applicant resided continuously in the United States during the requisite period.

- Two (2) affidavits from the applicant, both of which are dated May 3, 2005. In these affidavits, the applicant asserts that she has resided continuously in the United States since August 1981 but that she did not have any bills in her name from the requisite period. She goes on to say that her employers paid her in cash during the requisite period. She asserts that she did not open a bank account because she did not have a social security card and explains why she is not submitting medical records as evidence of her residence in the United States during the requisite period.

In the Acting Director's Notice of Intent to Deny (NOID), dated May 16, 2006, she states that though the applicant asserted that she continuously resided in the United States for the duration of the requisite period, she failed to produce documents that were sufficient to prove that she did so by a preponderance of the evidence. The director granted the applicant thirty (30) days within which to submit additional evidence. The record shows that as a response to the Acting Director's NOID, the applicant submitted the following:

- A second affidavit from [REDACTED] dated March 28, 2006. In this affidavit, the affiant provides testimony that is very similar to that which he previously submitted in May 2005. He states that he first met the applicant when he and she were children. As the applicant entered the United States as an adult, this indicates that he first met the applicant in Jamaica. Here, the affiant has continued to fail to state whether he was present in the United States during the requisite period or to submit proof that he resided in the United States during that time. He has further failed to submit documents as proof of his identity. Here, the affiant has not included a telephone number at which he can be reached to verify information in the affidavit. Because the affiant has not established that he was present in the United States during the requisite period and because this affidavit is not amenable to verification, it can be accorded little weight in establishing that the applicant resided in the United States during the requisite period.
- An affidavit from [REDACTED] that is dated March 27, 2006. In this affidavit, the affiant states that she has known the applicant for many years. She asserts that the applicant entered the United States in August 1981. Though the affiant states that the applicant is hard working and of good moral character, she does not state or submit evidence proving that she herself was present in the United States during the requisite period, nor does she submit documents as proof of her identity. Though the affiant provides details of the applicant's residences and places of employment during the requisite period, she does not indicate how she knows that the applicant resided and worked at these locations. Therefore, she has not proven that it is personally known to her that the applicant resided in the United States for the duration of the requisite period. The affiant failed to provide a telephone number at which she could be reached to verify information contained in the affidavit. Because the affiant has not established that she was present in the United States during the requisite period and because this affidavit is not amenable to verification, it can be accorded little weight in establishing that the applicant resided in the United States during the requisite period
- An affidavit from [REDACTED] dated March 28, 2006. In this affidavit, [REDACTED] states that she has been friends with the applicant for many years. She states that the applicant left for the United States in August of 1981. Though the affiant states that the applicant is hard working and of good moral character, she does not state or submit evidence proving that she herself was present in the United States during the requisite period nor does she submit documents as proof of her identity. Though the affiant provides details of the applicant's residences and places of employment during the requisite period, she does not indicate how she knows that the applicant

resided and worked at these locations. Therefore, she has not proven that it is personally known to her that the applicant resided in the United States for the duration of the requisite period. The affiant failed to provide a telephone number at which she could be reached to verify information contained in the affidavit. Because the affiant has not established that she was present in the United States during the requisite period and because this affidavit is not amenable to verification, it can be accorded little weight in establishing that the applicant resided in the United States during the requisite period.

- Affidavits from [REDACTED] and [REDACTED], all of whom currently live in Jamaica. These affidavits were all signed in February and March of 2006. In their affidavits, the affiants all state that they have known the applicant since they were kids. The affiants say that the applicant left Jamaica to go to the United States in 1981. They state that though the applicant was in the United States, she stayed in touch with them. Though these affiants provide details regarding the applicant's visits to Jamaica during the requisite period, they do not indicate that they ever saw the applicant in the United States. Therefore, the affiants have not proven that the events and circumstances of the applicant's residence in the United States are personally known to them. Because of this, these affidavits can be accorded very minimal weight in establishing that the applicant resided in the United States during the requisite period.
- A statement from the applicant dated May 25, 2006. In this statement, the applicant asserts that she maintained both continuous residence and continuous physical presence in the United States for the duration of the requisite periods. She goes on to indicate that she believes that she has met her burden of establishing that she resided continuously in the United States by the preponderance of the evidence. In this statement, the applicant refers to the additional affidavits submitted in response to the director's NOID.

In summary, though the applicant submitted numerous affidavits in support of her application, it is not clear that the affiants from whom they were submitted have personal knowledge of the events and circumstances of the applicant's residency in the United States during the requisite period. None of the affiants provided a telephone number at which they could be reached to verify information in their affidavits. **Therefore, their affidavits are not amenable to verification.** Although the applicant has provided statements asserting that she resided in the United States for the duration of the requisite period, the evidence she submitted in support of her application does not allow her to meet her burden of proving that she did so by a preponderance of the evidence for the reasons stated above.

In denying the application, the Acting Director noted that her office received evidence from the applicant in support of her application in response to her NOID. However, she found that this evidence was insufficient to overcome her grounds for denial.

On appeal, the applicant submits a brief from her attorney dated August 1, 2006. In it, through her attorney the applicant states that the Service did not accurately apply the terms of the Settlement Agreements when it adjudicated her application. She goes on to say that she submitted numerous affidavits in support of her application, all of which provide details regarding the applicant's residences and attest to her good moral character. The applicant notes that the Settlement Agreements specify that the Service cannot deny an application solely on the basis that an applicant has submitted only affidavits in support of his or her application. The applicant did not submit additional evidence with her appeal.

After reviewing all of the evidence in the record, it appears that the director did not deny the application because the applicant failed to submit contemporaneous evidence in support of her application. Rather, the application was denied because evidence submitted by the applicant did not carry sufficient weight to allow the applicant to establish that she continuously resided in the United States for the duration of the requisite period by a preponderance of the evidence.

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 that none of the affiants from whom the applicant submitted affidavits established that they were present in the United States during the requisite period and given that none of the affiants provided telephone numbers at which they could be reached to verify information provided in their affidavits, it is concluded that the applicant has failed to establish continuous residence in an unlawful status in the United States for the requisite period 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.