

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



**U.S. Citizenship
and Immigration
Services**

PUBLIC COPY

41

FILE: [REDACTED]
MSC-05-236-10897

Office: NEW YORK

Date: **MAY 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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

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 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 submitted credible affidavits related to her residence in the United States.

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).

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) 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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet her burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on May 24, 2005. At part #30 of the Form I-687 application where applicants are asked to list all residences in the United States since first entry, the applicant showed her first address in the United States to be in New York, New York from September 1988 until April 2001. At part #31, where applicants are asked to list all of their affiliations or associations with clubs, organizations, churches, unions, business, etc., the applicant responded “none.” At part #33, she showed her first employment in the United States to be self employed in Queens, New York in the occupation of cleaning from August 1990 until present.

At issue in this proceeding is the applicant’s 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). Pursuant to the CSS/Newman Settlement Agreements, the term “until the date of filing” 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. There is no information on the applicant’s Form I-687 application to indicate that she has

continuously resided in the United States for this requisite period. As a result, the Form I-687 application fails to establish the applicant's prima facie eligibility for temporary resident status.

On November 15, 2005, the director, National Benefits Center, issued a Notice of Intent to Deny (NOID). The NOID provides that the applicant failed to submit documentation to establish her eligibility for Temporary Resident Status. The applicant was afforded 30 days to provide additional evidence in response to the NOID. Pursuant to 8 C.F.R. § 245a.2(d)(6), to meet her burden of proof, an applicant must provide evidence of eligibility apart from her own testimony. The regulations at 8 C.F.R. § 245a.2(d)(3) provide an illustrative list of contemporaneous documentation that may be provided 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." 8 C.F.R. § 245a.2(d)(3)(vi)(L). In response to the NOID, the applicant submitted an affidavit from [REDACTED] and [REDACTED]

The affidavit from [REDACTED] dated December 2, 2005, states that he has known the applicant since 1987. This affidavit provides, "[REDACTED] is a well known and respected person in our community whom I have had the privilege of attending the school as I [sic]. She is honest, reliable and dedicated person who has committed all her energy and attention to her work." This affidavit contains several apparent deficiencies. First, it does not provide any information on Mr. [REDACTED] first acquaintance with the applicant. Relevant information would include how and where [REDACTED] first met the applicant. Notably, this affidavit does not indicate that Mr. [REDACTED] first met the applicant in the United States. Second, the affidavit does not provide any information on [REDACTED]'s personal knowledge of the applicant's residence in the United States during the requisite period. Relevant information would include the type and frequency of contact [REDACTED] had with the applicant during the requisite period. Finally, the affidavit indicates that the applicant attended school. The biographical page of the applicant's passport shows her date of birth as February 24, 1975. Therefore, she would have been of school age during the requisite period. However, the applicant has not submitted any school records as evidence of her school attendance in the United States. Given these numerous deficiencies, this affidavit cannot be given any probative value as evidence of the applicant's continuous residence in the United States since 1987.

The affidavit from [REDACTED] Hindu Priest, dated December 1, 2005, states that he has known the applicant since 1983. This affidavit provides, "I have known Ms. [REDACTED] since 1983. She is now a member of our Temple. Ms. [REDACTED] [sic] is a very religious, hard working, law bidding [sic] and a honest person." This affidavit is similarly deficient in several respects. First, it does not provide any information on [REDACTED] first acquaintance with the applicant. Relevant information would include how and where Mr.

first met the applicant. Notably, this affidavit does not indicate that [REDACTED] first met the applicant in the United States. Second, the affidavit does not provide any information on [REDACTED]'s personal knowledge of the applicant's residence in the United States during the requisite period. Relevant information would include the type and frequency of contact Mr. [REDACTED] had with the applicant during the requisite period. The affidavit states that the applicant is now a member of [REDACTED]'s temple. However, it does not specify the date that the applicant became a temple member and it does not state the name of this temple. Given these numerous deficiencies, this affidavit cannot be given any probative value as evidence of the applicant's continuous residence in the United States since 1983.

On June 8, 2006, the district director, New York, issued a second NOID to the applicant. The director found that the affidavits from [REDACTED] and [REDACTED] are not credible or amenable to verification. The director noted that the applicant testified that she lived with Mr. [REDACTED] when she first came to the United States in 1981. The director found that this testimony conflicts with the affidavit from [REDACTED] which states that he has known the applicant since 1983 as a member of the temple. The director determined that the applicant has not demonstrated eligibility for temporary resident status. The applicant was afforded 30 days to provide additional evidence in response to the NOID.

In response to the NOID, the applicant submitted an additional affidavit from [REDACTED] and an affidavit from her parents, [REDACTED] and [REDACTED].

The affidavit from [REDACTED] dated June 16, 2006, provides in pertinent part:

I am the Priest of the Temple (church) located at 196-21 91st Ave, Hollis, NY 11423 I've known Ms. [REDACTED] since 1981 and she became a member of our Temple located at the aforementioned address in 1983. She was born in Guyana, South America and her date of birth is February 24, 1975[.] Her mother's name is [REDACTED] and her father's name is Mr. [REDACTED]. I am aware that Ms. [REDACTED] on a few occasions, has made trips out of the US and returned. She is self employed I have known her since 1981 and I was like a father to her.

This affidavit provides additional biographic details on the applicant, but it does not establish [REDACTED]'s personal knowledge of the applicant's residence in the United States during the requisite period. First, this affidavit neglects to provide any details on how [REDACTED] first met the applicant and their subsequent relationship. Again, this affidavit does not indicate that they first met in the United States. Notably, this affidavit states that [REDACTED] has known the applicant since 1981, while his initial affidavit, dated December 1, 2005, provides that he has known the applicant since 1983. Second, in rebuttal to the NOID, the applicant issued an affidavit stating that she has lived with [REDACTED] since 1981 and became a member of the temple in 1983. However, the applicant's Form I-687 application does not show her residence in the United States in 1981 nor does it show that she has been a member of a religious organization since 1983. Moreover, neither of [REDACTED]'s affidavits state that he has ever resided with the

applicant. Finally, this affidavit states that the applicant has been a member of [REDACTED] temple since 1983, but neglects to provide the name of the temple. The regulations at 8 C.F.R. § 245a.2(d)(3)(v) provide, in part, that attestations by religious organization should state the address where the applicant resided during the requisite period; include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; and establish how the author knows the applicant. This letter fails to conform to the delineated guidelines. Given these significant deficiencies, this affidavit does not have any probative value and credibility as evidence of the applicant's continuous residence in the United States during the requisite period.

The affidavit from the applicant's parents, [REDACTED] and [REDACTED], dated June 16, 2006, provides, in pertinent part:

We were born and raised in Guyana, South America and migrated to the United States in July, 1999 In 1981 we made a very difficult decision to send [the applicant] to the United States at such a young age. We were heartbroken to see her leave Guyana, but we knew that she would have a better future in a free country, United States of America She left Guyana in 1981 with a trusted family friend and went to Canada. From there she went across to the United States and stayed with another family friend, [REDACTED] until she was able to be independent. Sometime in 1988, after her failed attempt to gain lawful status through the amnesty program, she moved back to Canada. She remained there until 1999, when she returned to the United States to live with us.

This affidavit states that the applicant's parents, [REDACTED] and [REDACTED], were outside of the United States during the requisite period. Therefore, they do not have specific and personal knowledge of the applicant's residence in the United States during the requisite period. Furthermore, their assertion that the applicant resided in Canada from 1988 until 1999 is inconsistent with the applicant's Form I-687 application. The application shows that the applicant resided in Hollis, New York from September 1988 until April 2001. Although this inconsistency is not material to the requisite period at issue, it does negate the veracity of their testimony. Given these discrepancies, this affidavit does not have any probative value and credibility as evidence of the applicant's continuous residence in the United States during the requisite period.

On July 24, 2006, the director issued a denial notice to the applicant. In denying the application, the director found that the affidavits are not persuasive or credible and are self-serving and unsupported by any actual primary evidence. The director noted that the additional affidavit from [REDACTED] fails to explain the discrepancy in the differing dates he claims to have first met the applicant. The director determined that the applicant has not provided any evidence to establish that she has resided in the United States for the requisite periods and is admissible to the United States under section 245A of the Act. The director concluded that the applicant had not met her burden of proof in the proceeding. It should be noted that the regulations at 8 C.F.R. § 245a.2 do not differentiate between "primary" and "secondary" evidence. Pursuant to 8 C.F.R.

§ 245a.2(d)(vi)(L), an applicant may submit any relevant document to establish her eligibility for temporary resident status. Nevertheless, the director's actions must be considered to be harmless error as the AAO conducts a de novo review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(d)(6).

On appeal, the applicant asserts that the affidavit from [REDACTED] a priest, establishes his identification, relationship and personal knowledge of her living in the United States prior to January 1, 1982 and it should be accepted as credible evidence. The applicant further asserts that the affidavit from her parents stating when she left Guyana should also be accepted as credible evidence. The applicant states that these affidavits show clearly that she lived in the United States prior to January 1, 1982 and she traveled out of the country briefly, causally and innocently. The applicant notes that she is a person of good moral character and financial standing, and has never been a public charge.

The sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6). The applicant has failed to provide probative and credible evidence of her residence in the United States during the requisite period. As discussed above, the affidavits the applicant submitted contain deficiencies and inconsistencies that render them of no probative value as evidence of her continuous residence in the United States during the requisite period. When viewing these documents either individually or within the totality, they do not establish that the applicant's claim is probably true. The applicant has been given the opportunity to satisfy her burden of proof with a broad range of documentary evidence. See 8 C.F.R. § 245a.2(d)(3). On appeal, the applicant failed to submit any additional corroborating documentation. The applicant's own assertions regarding her evidence do not satisfy her burden of proof. See 8 C.F.R. § 245a.2(d)(6). The applicant's failure to provide sufficient documentary evidence to establish her continuous residence in the United States during the requisite period renders a finding that she has failed to satisfy her burden of proof in this proceeding. See 8 C.F.R. § 245a.2(d)(5).

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 well as the inconsistencies and contradictions noted in the record, seriously detract 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 inconsistencies in the record and the lack of credible supporting documentation, it is concluded that the applicant 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.