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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



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



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FILE: [REDACTED] MSC-06-097-11083

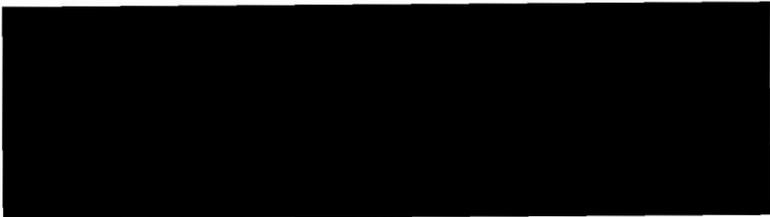
Office: NEW YORK

Date: **APR 07 2009**

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:



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.

John F. Grissom
Acting 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 Director, New York, and is now before the Administrative Appeals Office 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 denied the application after determining 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 noted that the affidavits submitted were not credible or amenable to verification and that the applicant had submitted fraudulent documents. 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 asserts that the applicant has submitted credible affidavits, immunization records and school records sufficient to establish her eligibility for temporary resident status. Counsel further asserts that the applicant did not submit any fraudulent documents. The applicant does not submit any new evidence on appeal.

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. See 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 since before January 1, 1982, and throughout the requisite period. Here, the applicant has failed to meet this burden.

The applicant submitted the following attestations:

- An affidavit from [REDACTED] in which she stated that she is the applicant's mother and that she entered the United States on December 8, 1981. She further stated that she and the applicant's father broke up in Jamaica and that he entered the United States in August 1981. She stated that the applicant arrived in the United States on October 20, 1981 with a family friend. She further stated that the applicant lived with her father and his girlfriend from October 1981 until 1985, and that after that time she began living with the affiant. The affiant stated that the applicant had already begun attending school and was in the third grade at the time she began living with her. The affiant also stated that the applicant was not able to enroll in school until 1983 due to her illegal status and that prior to that time, the applicant was placed with a babysitter named [REDACTED].

- An affidavit dated April 3, 2006 from [REDACTED] in which she stated that she has known the applicant for the past twenty-five years, having first met her in the company of her mother in Bronx, New York in December 1981. The affiant also stated that the applicant's mother told her that the applicant entered the United States via JFK Airport in October of 1981, and that she knows that the applicant lived with her father from 1981 to 1985. The affiant stated that she and that applicant's family have remained friends throughout the years, and that they visit with each other often.
- An affidavit dated April 3, 2006 from [REDACTED] in which she stated that she has known the applicant for the past 25 years, having first met her in December of 1981 on [REDACTED] in the company of her father [REDACTED] as they were shopping for clothes in Bronx, New York. The affiant also stated that she became close friend with the applicant's parents and that they told her of the applicant's immigration matters and that the applicant entered the United States through JFK Airport in the company of a family friend. She stated that she resided at [REDACTED] in Bronx, New York from 1979 to 1986. The affiant also stated that she was employed as a babysitter from 1979 to 1986 and that from October 1981 to March 1983 the applicant's mother and father placed the applicant with her.

None of the affiants specify the applicant's place of residence during the requisite period. There is no evidence in the record of proceeding to demonstrate that affiants [REDACTED] and [REDACTED]'s statements are based upon their first-hand knowledge of the applicant's entry into the United States or the circumstances of her residency throughout the requisite period. The applicant's mother's statements are inconsistent with the information contained in the applicant's immunization records. Affiant [REDACTED]'s statements are contradictory in that she initially stated in her affidavit that she met the applicant in December of 1981 but later stated in that same affidavit that she babysat for the applicant from October 1981 to March 1983.

The applicant submitted a copy of her high school transcripts from [REDACTED] that are dated subsequent to the requisite period and are irrelevant with respect to the applicant's claimed continuous residence in the United States. The applicant also submitted a copy of an immunization record from the New York City Public Schools which states that she received immunizations in 1983 and 1984. She also submitted a copy of her Permanent Record of Immunizations and Tests card that indicated that in 1983 and 1984 her parent's name was [REDACTED] and that her address was [REDACTED] in Bronx, New York. This information is inconsistent with the applicant's Form I-687 application where she stated under penalty of perjury that she resided at [REDACTED] in Bronx, New York from December 1982 to December 1985. This information is also inconsistent with the applicant's mother's statements in that the immunization records show the applicant in the 3rd grade in 1983, not 1985 as stated by the applicant's mother. It is also noted that [REDACTED] is not mentioned as the applicant's parent or guardian anywhere in the record of proceeding. The applicant submitted copies of her elementary school transcripts which indicated that she first entered New York City public schools on April 14, 1983 and remained there until June 1989.

These unresolved inconsistencies and contradictions cast doubt on the applicant's proof. 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. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

The director determined that the applicant had failed to demonstrate her continuous unlawful residency in the United States throughout the requisite period.

On appeal, counsel reasserts the applicant's claimed eligibility for the immigration benefit sought. The applicant does not submit any new evidence.

Given the unresolved inconsistencies and contradictions found in the record, the applicant has failed to establish her continuous residence in the United States since prior to January 1, 1982. She has failed to overcome the basis for the director's denial. Although the record contains some evidence of the applicant's presence in the United States since 1983, it is insufficient to demonstrate her continuous residence in the United States throughout the requisite period.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period and the inconsistencies noted above seriously detract 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 inconsistencies found in the record, 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.