

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**PUBLIC COPY**



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

41

FILE:

MSC 05 069 21747

Office: HARTFORD

Date: **AUG 06 2009**

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. 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, Hartford. 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, and that the evidence submitted by her did not establish her eligibility for the immigration benefit sought. 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. The director further noted that the applicant had used an admitted alias, [REDACTED]. When asked during her legalization interview whether the applicant had ever used the name [REDACTED], the applicant responded that she had not, even though that name appeared on her RAP sheet when fingerprinted for the purpose of processing her Form I-687. The director noted that the applicant's true identity could not be determined.

On appeal, counsel submits a brief and copies of exhibits stating that the record is sufficient to establish the applicant's eligibility for the immigration benefit sought.

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 245(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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony, and 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).

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 (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. The record contains the following evidence which is material to the applicant’s claim:

- [REDACTED] submitted an affidavit wherein he stated that: he had known the applicant for seven years; the applicant was in the United States from June 20, 1981 to the date of the affidavit (May 22, 1989); and that during that period of time, the applicant used the name [REDACTED] “for traveling purposes;”
- [REDACTED] submitted two affidavits on behalf of the applicant wherein she stated that the applicant resided with her at [REDACTED] from June of 1981 until the date of the affidavit (May 22, 1989);
- [REDACTED] and [REDACTED] stated that they have known the applicant since 1981 and that she resided in Bronx, NY from June of 1981 until the date of their affidavits;

As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. The affidavits provided do not provide detailed evidence establishing how the affiants knew the applicant, the details of their association or relationship, or detailed accounts of an ongoing association establishing a relationship under which the affiants could be reasonably expected to have personal knowledge of the applicant's residence, activities and whereabouts during the requisite period covered by the applicant's Form I-687. To be considered probative, witness statements must do more than simply state that a witness knows an applicant and that the applicant has lived in the United States for a specific time period. The statements must contain sufficient detail, generated by the asserted contact with the applicant, to establish that a relationship does in fact exist, how the relationship was established and sustained, and that the witness does, by virtue of that relationship, have knowledge of the facts asserted. The witness statements submitted by the applicant, therefore, are not deemed probative and are of little evidentiary value because they lack sufficient detail to establish that the facts asserted are probably true.

- [REDACTED] submitted a notarized statement dated May 14, 1989 wherein he stated that the applicant had been his patient since December of 1982. That statement does not detail treatment dates or locations, or include copies of any medical records. The statement is, therefore, not deemed probative and is of little evidentiary value.
- The applicant submitted a copy of an airline ticket for [REDACTED]. The ticket is supposed to represent proof of the applicant's travel outside the United States in 1987. The ticket does not have a legible date establishing the year of travel, nor does the record contain any evidence that the applicant is [REDACTED], other than the affidavit of [REDACTED] which is general in nature and lacks sufficient detail to be deemed probative;
- [REDACTED] submitted a statement that is neither sworn to nor notarized wherein Mr. [REDACTED] indicates that he is the Traffic and Warehousing Manager of Karpel Curtain Corp. [REDACTED] states that the applicant was employed by his organization as a supervisor from October of 1981 to February of 1987, while she resided at [REDACTED] Bronx, NY earning \$6.50 per hour. Neither [REDACTED] nor the applicant submit wage/earnings or other company records supporting the statement.

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable. The employment statement submitted by the applicant fails to provide the information required by the above-cited regulation. The statement does not: show periods of layoff (or state that there were none); state the applicant's duties; declare whether the information provided was taken from company records; or identify the location of such company records and state whether they are accessible or in the alternative why they are unavailable. As such, the employment statement is not deemed probative and is of little evidentiary value.

- The Reverend [REDACTED], Greater Zion Baptist Church submitted a statement that is neither sworn to nor notarized wherein he states that the applicant attended his church regularly from December of 1981 until the date of the statement (May 22, 1989).

The regulation at 8 C.F.R. § 245a.2(d)(3)(v) provides requirements for attestations made on behalf of an applicant by churches, unions, or other organizations. Attestations must: (1) Identify applicant by name; (2) be signed by an official (whose title is shown); (3) show inclusive dates of membership; (4) state the address where applicant resided during membership period; (5) include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; (6) establish how the author knows the applicant; and (7) establish the origin of the information being attested to.

The attestation presented does not comply with the regulation in that it does not establish how the author knows the applicant or the origin of the information being attested to. As such, the attestation is not deemed probative and is of little evidentiary value.

The only other evidence submitted by the applicant in support of her application are her own sworn statements. The applicant's statements, however, in the absence of other probative relevant evidence supporting her application, will not sustain her claim. As previously noted, in order to meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony, and 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). As previously noted, the evidence submitted by the applicant outside her own testimony is not deemed probative and lacks evidentiary value.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period 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 applicant's reliance upon documents with minimal probative value, it is concluded that the evidence submitted fails to establish continuous residence in an unlawful status in the United States during the requisite period.

Therefore, based upon the foregoing, 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.

It should further be noted that evidence of record establishes that the applicant was placed in removal proceedings in September of 1986.

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