



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy
PUBLIC COPY

L1

[REDACTED]

FILE:

MSC 04 321 10568

Office: CHICAGO

Date:

FEB 27 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:

[REDACTED]

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, Chicago. The decision is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director denied the application because the applicant did not establish that she continuously resided in the United States for the duration of the requisite period. In so finding, the director noted that the applicant submitted unverifiable fill-in the blank affidavits from persons who claimed they have know her since 1982. The director also noted that the applicant submitted a letter from a company named [REDACTED] Repairs and Services showing she was employed as a receptionist from June 1984 to May 1987, but when the firm was contacted at the telephone number provided, the telephone was answered by an employee at [REDACTED]. Also, when the [REDACTED] [REDACTED] was contacted, a child answered.

On appeal, counsel explains that the applicant was involved in an automobile accident on July 4, 2005, she was in a coma and suffered extensive brain injury. Counsel further explains that although she is on her way to recovery, she was not successful in answering all of the questions posed during her interview. Counsel argues that the interviewing examiner ignored the doctors' reports and hospital records which would suggest that the applicant was, and is not capable of helping herself.

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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1255a(a)(2). 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 for Status as a Temporary Resident Under Section 245A of the Immigration and Nationality Act, 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).

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.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine the evidence for relevance, probative value, and credibility, within the context of the totality of the evidence, to determine whether the facts to be proven are probably true.

Even if the director has some doubt as to the truth, if the applicant 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 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.

On appeal, counsel argues that the applicant’s capability to help herself should have been more carefully considered by the examiner. However, it noted that when the applicant filed her Form I-687, Application for Status as a Temporary Resident Under Section 245A of the Immigration and Nationality Act, on August 16, 2004, she was assisted by counsel in completing that application and it is assumed to have received competent help at that time. The evidence cited as being discrepant by the director was filed by the applicant with her application. No evidence has been submitted on appeal to overcome the findings of the director.

The record contains a Cook County Bureau of Health Services Consultation Form provided by the applicant showing that she was referred on January 24, 2006 by [REDACTED], to [REDACTED], for an interview. [REDACTED] stated on the consultation form that the patient is a Nigerian born 44 year old female who is unnaturalized who entered the country by marrying at age 27. It is noted that the record also contains a Petition for Guardianship that was filed with the Circuit Court of the Twenty-First Judicial Circuit, Kankakee County, Illinois – In Probate in the Matter of the Estate and Person of [REDACTED] a disabled adult, by [REDACTED] on July 26, 2005. ([REDACTED]). In his petition, [REDACTED] explained that he was the estranged husband of the applicant. On her Form I-687, the applicant stated that she was married, adding credence to the likelihood that she first entered the United States in 1988 at age 27, and not on May 13, 1981 at the age of 19 as indicated on her Form I-687.

In his decision, the director noted that the applicant submitted a letter from a company named [REDACTED] Building Repairs and Services showing the applicant was employed as a receptionist from June 1984 to May 1987, but when the firm was contacted at the telephone number provided, the telephone was answered by an employee at [REDACTED]. The applicant did not respond to this discrepant information cited in his determination.

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. Further, the applicant must resolve any inconsistencies in the record with competent, independent, objective evidence. Attempts to explain or reconcile such inconsistencies, absent competent objective evidence sufficient to demonstrate where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec.

582, 591-92 (BIA 1988). These inconsistencies cast doubt not only on the evidence containing the conflicts, but on all of the applicant's evidence and all of his assertions.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate entry into the United States prior to January 1, 1982, and continuous residence during the requisite period.

The evidence must be evaluated not by the quantity of evidence alone but by its quality. 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 its amenability to verification. Given the paucity of credible supporting documentation, the applicant has failed to meet her burden of proof and failed to establish continuous residence in an unlawful status in the United States during the requisite period. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act. The application was correctly denied on this basis, which has not been overcome on appeal. Consequently, the director's decision to deny the application is affirmed.

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