

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

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**

PUBLIC COPY

L,



FILE: [REDACTED] Office: NEW YORK
MSC 06 073 11950

Date: **NOV 02 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:

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.

Perry Rhew
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. 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 denied the application, finding that the applicant had not provided credible evidence to establish that she had entered the United States prior to January 1, 1982, and thereafter continuously resided in the United States in an unlawful status for the duration of the requisite period.

On appeal, the applicant states that on November 13, 2007, a package containing additional evidence requested by the United States Citizenship and Immigration Services (USCIS) was hand delivered and inadvertently misplaced by the USCIS. The applicant claims that the initial package contained original documents and pictures and that the director's decision was based on a subsequent package that did not include this evidence. The record of proceeding now contains the initial package received by USCIS on November 13, 2007.

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.

At issue in this proceeding is whether the applicant submitted sufficient credible evidence to meet her burden of establishing that she (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 documentation that the applicant submits in support of her claim to have arrived in the United States before January 1, 1982 and lived in an unlawful status during the requisite period consists of letters of relationship written by friends, letters from previous employers, a letter from the parish secretary of the St. Martha’s Catholic Parish, three photographs and other evidence. The AAO will consider all of the evidence relevant to the requisite period to determine the applicant’s eligibility.

The applicant’s statement and the USCIS adjudicating officer’s notes reveal that during the Form I-687 application interview, the applicant claimed to have first entered the United States without inspection by boat at Miami, Florida, on August 23, 1981. The applicant claimed that she lived in Miami until March, 1982, and then moved to New York.

The applicant submitted letters from [REDACTED], and [REDACTED] to establish her initial entry and residence in the United States during the requisite period. [REDACTED] states in her letter what happened when the applicant attempted to apply for legalization. [REDACTED] states that the applicant did not tell the officer that she traveled to Haiti in the 1980s but told the officer she came by boat in 1981 and was turned away in 1988 by an agency located in Manhattan for lack of documentation and not allowed to apply. [REDACTED] states that he has known

the applicant for over 20 years and recommended her to several individuals for cleaning and babysitting services. [REDACTED] states that he has known the applicant for many years, that she has performed housekeeping duties for him and that they share a number of acquaintances. None of the witnesses attest to when they met the applicant and the circumstances surrounding that meeting. The witnesses generally attest to the applicant's good moral character but provide no other information about the applicant.

The letters do not include sufficient detailed information about the claimed relationship and the applicant's continuous residence in the United States since before January 1, 1982 and throughout the requisite period. For instance, none of the witnesses supplies any details about the applicant's life, such as, knowledge about other family members, education, hobbies, and shared activities. The letters fail to indicate any other details that would lend credence to the claimed acquaintance with the applicant and the applicant's residence in the United States during the requisite period.

The letters do not provide concrete information, specific to the applicant and generated by the asserted associations with her, which would reflect and corroborate the extent of those associations and demonstrate that they were a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the statements. To be considered probative and credible, witness affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Therefore, the letters will be given nominal weight.

The applicant submitted letters from her previous employers, [REDACTED] and [REDACTED]. [REDACTED] states that she has known the applicant since 1981 in Miami and she used to clean her house once a week for six months. [REDACTED] does not indicate the dates the applicant was employed. [REDACTED] states that the applicant worked as a home attendant for her mother, [REDACTED] from 1982 to 1986. [REDACTED] states that she used the applicant's cleaning services twice a month from the end of 1986 to mid 1992. 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. As these requirements have not been complied with, the statements will be given nominal weight.

The letter signed by the parish secretary of St. Martha's Catholic Parish states that the applicant is a registered parishioner of the church. The letter does not give the dates of the applicant's membership in the church and is not probative of her residence in the United States during the requisite period. 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 letter from [REDACTED] does not contain most of the aforementioned requirements. Moreover, the applicant does not claim to be a member of this organization on her Form I-687 application. The evidence will be given no weight.

The remaining evidence consists of an affidavit delivered to, [REDACTED] three photographs and a certificate to return to work or school from the Macon-Nostrand Medical Clinic, Brooklyn, New York. The photographs are reproductions and do not bear the original date that they were taken. The copy of the certificate to return to work or school from the Macon-Nostrand Medical Clinic, Brooklyn, New York, states that the applicant was under their care from November 7, 1986 to November 15, 1986 and able to return to work/school on November 17, 1986. The English translation of the affidavit from [REDACTED] and [REDACTED] states that they have common knowledge that [REDACTED] was the guardian of two minor children, [REDACTED] and [REDACTED] since the departure of their mother in 1981 through April 1994. The residence of the children's mother is not mentioned in the affidavit. The evidence does not establish the applicant's continuous residence in the United States throughout the requisite period.

An applicant applying for adjustment of status under this part has the burden of proving by a preponderance of evidence that he or she is eligible for adjustment of status under section 245a of the Act. 8 C.F.R. § 245a.2(d)(5). In the instant case, the applicant has failed to submit sufficient evidence to overcome the director's denial. The insufficiency of the evidence calls into question the credibility of the applicant's claim of continuous unlawful residence in the United States throughout the requisite period. The evidence submitted is insufficient to establish 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 requisite period.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that she entered the United States before January 1, 1982 and 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.

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