

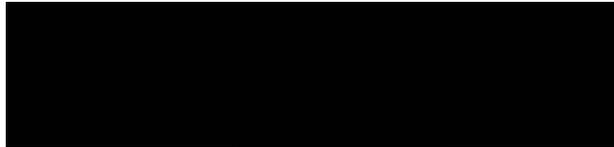
**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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



L1

FILE: [REDACTED]
MSC-06 088 16046

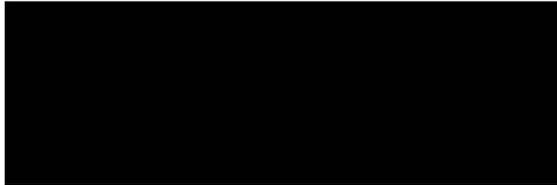
Office: BALTIMORE

Date: **SEP 22 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 in Baltimore, Maryland. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a native of Jamaica who claims to have lived in the United States since June 1981, 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 on December 27, 2005. The director denied the application, finding 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.

On appeal counsel asserts that the applicant has submitted sufficient credible evidence to establish that she meets the continuous residence requirement but that the director failed to make diligent effort to contact and verify the information provided by the affiants. Counsel submitted a current affidavit by the applicant with explanation for the evidentiary deficiencies and discrepancies cited by the director in the Notice of Intent to Deny (NOID) and the Notice of Decision (NOD). The applicant also provided current contact information on some of the affiants who had submitted affidavits on her behalf.

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 periods, 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's 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).

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 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. *See* 8 C.F.R. § 245a.2(d)(6). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

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 or petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (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 documentation that the applicant submits in support of her claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of the following:

- An undated statement from [REDACTED] who claims to be the applicant's mother stating that she and the applicant entered the United States on June 20, 1981, through Buffalo, New York, that she and the applicant lived with [REDACTED] [REDACTED] in Hyattsville, Maryland, that she subsequently returned to

Canada sometime in February 1988 where her husband and other children lived, and that the applicant continued to live at the Hyattsville, Maryland address until 1996.

Three affidavits sworn to in 2006 and one undated statement from individuals who claim to have known the applicant resided in the United States during the 1980s.

- A photocopied photograph of the applicant and other people with no notation or date stamp showing when and where the photograph was taken.

The AAO has reviewed each document in its entirety to determine the applicant's eligibility.

The AAO notes that the applicant, who claims to have traveled to the United States with her mother in June 1981, was only 9 years old when she allegedly entered the United States in 1981. The applicant did not submit any credible documentation from her mother to establish such entry. For someone claiming to have lived in the United States since 1981, it is noteworthy that the applicant is unable to produce a solitary piece of primary evidence during the following seven years through May 4, 1988, such as school or medical records, particularly immunization records which is reasonable to expect from a child of 9 years living in the United States in 1981.

The applicant stated in the Sworn Statement she completed under oath on October 10, 2006, that she attended Adelphia Elementary school in Adelphia, Maryland from 1982 to 1984, Bucklodge Middle School from 1984 to 1986, and Highpoint High School in Beltsville, Maryland from 1986 to 1990. The applicant did not submit any documentation from the schools or her High School Diploma to show that she attended the schools and the periods she attended them. Nor did the applicant submit any credible evidence as to why she is unable to produce her school records, such as a letter from the schools stating why they were unable to provide any of the applicant's school records.

The statement from the applicant's mother is vague as to the applicant's life and continuous residence in the United States. The statement did not provide any information as to the schools attended by the applicant, did not provide any credible evidence to establish the date she and the applicant entered the United States. The author did not provide any document to establish her own identity and or evidence that she resided in the United States during the 1980s. The statement is not sworn to or dated. Therefore, the statement has little probative value as credible evidence that the applicant entered the United States before January 1, 1982 and resided continuously in the country through the requisite period.

As for the undated statement and affidavits in the record from individuals who claim to have known that the applicant resided in the United States during the 1980s, they provided very few details about the applicant's life in the United States, which school she attended, and the nature and extent of their interactions with her over the years. Nor are the statement and affidavits

accompanied by any documentary evidence – such as photographs, letters, and the like – of the affiants' personal relationships with the applicant in the United States during the 1980s. Additionally, none of the affiants provided documents to establish that they were residing in the United States during the 1980s. In view of these substantive shortcomings, the AAO finds that the statement and affidavits have little probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.

The photocopied photograph in the file has no probative value as evidence of the applicant's residence in the United States during the requisite period. There is no notation on the photograph as to when or where it was taken, and even if it was taken in the United States during the 1980s, the single photograph is insufficient to establish that the applicant resided in the United States when the photograph was taken much less her continuous residence in the United States for the duration of the requisite period.

Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that she is eligible for the benefit sought.

Therefore, based upon the foregoing analysis of the evidence, the AAO finds that 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 on this basis.

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