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



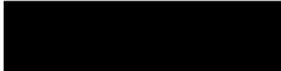
U.S. Citizenship
and Immigration
Services



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Date: **FEB 28 2012**

Office: SAN FRANCISCO, CA

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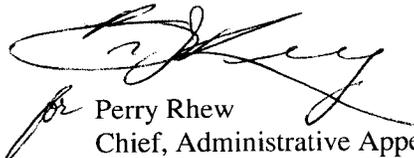
IN RE: Applicant: 

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: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the National Benefits Center. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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.


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, or *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 Field Office Director, San Francisco, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record indicates that the applicant is a native of the Gambia who claims to have resided in the United States since March 1981. She filed an application for temporary resident status under section 245A of the Act (Form I-687), together with a Form I-687 Supplement, CSS/Newman (LULAC) Class Membership Worksheet, on December 16, 2005.

On January 22, 2007, the director denied the application after determining that the applicant had failed to establish the requisite continuous residence and continuous physical presence in the United States. The director noted that in a November 30, 2006 Notice of Intent to Deny (NOID), he had requested that the applicant provide evidence demonstrating her continuous unlawful residence, and continuous physical presence, in the United States during the requisite period. The director also noted that the applicant did not provide the evidence requested within the 30-day period, but instead she had submitted a letter, dated December 26, 2006 requesting an additional 60 days to respond to the NOID. It is noted, however, that the director did not inform the applicant that she was entitled to file an appeal with AAO.

On February 17, 2011, the director issued a new Notice of Decision denying the application and informing the applicant that she may file an appeal with the AAO. The director noted that the applicant had not established that she resided in the United States in a continuous unlawful status from before January 1, 1982 through the date of attempted filing during the original one-year application period that ended on May 4, 1988. The director also noted that at her August 9, 2006 interview the applicant testified that from March 1988 to January 2002, she had resided outside the United States. The director determined that the applicant had failed to maintain her continuous residence as she had a single absence of over 45 days from the United States during the requisite period. The director determined, therefore, that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, the applicant asserts that she has provided sufficient evidence to establish her eligibility for Temporary Resident Status. She also asserts that she maintained her continuous residence and that she never had a single absence that exceeded 45 days during the requisite period. The applicant submits 8 of the 9 declarations previously provided.

The AAO has reviewed all of the evidence, and has made a *de novo* decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.¹

¹The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

An applicant for temporary resident status – under section 245A of the Immigration and Nationality Act (the Act) – 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. *See* 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. *See* 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. *See* 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. *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 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 or petition.

Although the regulations provide an illustrative list of contemporaneous documents that an applicant may submit, the list also permits the submission of affidavits and any other relevant document. See 8 C.F.R. § 245a.2(d)(3)(vi)(L).

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 first issue in this proceeding is whether the applicant had a single absence that exceeded 45 days, and therefore failed to maintain continuous residence in the United States.

Continuous unlawful residence is broken if an absence from the United States is more than 45 days on any one trip unless return could not be accomplished due to emergent reasons. 8 C.F.R. § 245a.2(h)(1)(i). "Emergent reasons" has been defined as "coming unexpectedly into being." *Matter of C*, 19 I&N Dec. 808 (Comm. 1988).

On appeal, the applicant asserts that she maintained continuous residence as she did not exceed a 45-day single absence from the United States. She states that she departed the United States on March 26, 1988 for the Gambia, and remained there for a period of less than 45 days. We note that the record lacks evidence of the date of the applicant's claimed departure in March 1988. Therefore, we cannot conclude from the record that the applicant had a single absence that exceeded 45 days.

The next issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that she continuously resided in the United States in an unlawful status from before January 1, 1982 through the date she attempted to file a Form I-687 during the original one-year application period that ended on May 4, 1988. After reviewing the entire record, the AAO determines that she has not.

The record contains the following evidence submitted by the applicant:

Declarations:-

- 1) A declaration from [REDACTED] dated October 28, 2005, stating that the applicant, and siblings, [REDACTED] came to the United States in August 1980 with their uncle, [REDACTED] and his wife, [REDACTED] when he visited the United States while on a diplomatic mission; that the applicant and her siblings lived with Mr. and [REDACTED] family friends, who worked at the Gambia Embassy in Washington, D.C.; that he had seen the applicant and her siblings annually from 1983 to 1987 while he was on business trips; and that in 1984 when Mr. and [REDACTED] were redeployed from the embassy, he and [REDACTED] rented an apartment for the applicant and her siblings in Silver Spring, Maryland.

██████████ also states that in July 1987 he learned of the Immigration Reform and Control Act of 1986 and he completed applications for the applicant and her siblings, but their applications were not accepted because they had travelled to London in 1986; and that the applicant and her siblings lived in the United States until March 1988 when they returned to Gambia for ██████████ funeral and they stayed there to continue their education.

- 2) A declaration from ██████████, dated October 22, 2005, stating that he resides in London, England and that his niece, the applicant and her siblings, ██████████ moved to the United States in August 1980 and lived with Mr. and Mrs. ██████████ who worked at the Gambia Embassy in Washington, D.C.; that he had maintained regular telephone contact with the applicant and her siblings; that in December 1986 the applicant and her uncle ██████████ visited him; that he had been informed by ██████████ that he was unsuccessful in getting legal documents for the applicant and her siblings as their applications were not accepted because of their 1986 visit to London. ██████████ also states that the applicant and her siblings resided in the United States until March 1988 when they returned to Gambia for ██████████ funeral and stayed there to continue their education as they were unable to obtain documents to return to the United States legally; and, that in September 1991 the applicant came to pursue her education in London and lived with him and his family until August 1993, and that she returned to London in 1996 to pursue a Master of Science degree.
- 3) A declaration from ██████████ dated November 8, 2005. Mrs. ██████████ states that the applicant is her niece and former ward; that in August 1980 the applicant and her siblings, ██████████ and ██████████ accompanied her husband ██████████ who was then Minister of Tourism and Culture in Gambia, on a trip to the United States; that the applicant and her siblings lived in Silver Spring, Maryland, with ██████████ who worked at the Gambia Embassy in Washington, D.C., until ██████████ when ██████████, an uncle, rented an apartment for them. ██████████ also states that in December 1986 her husband visited the United States and took the applicant and her sister ██████████ on a 10-day trip to visit his brother-in-law, ██████████ in London where they spent the Christmas holidays together; and that the applicant and her siblings returned to the United States with her husband. ██████████ further states that she was informed that ██████████ had tried, but was unsuccessful in getting legal documents for the applicant and her siblings as their amnesty applications were not accepted because of their 1986 trip to London. ██████████ also states that the applicant and her siblings resided in the United States until March 1988 when they returned to Gambia to attend her husband's funeral and stayed there because they could not get documents to return to the United States legally.
- 4) Declarations from ██████████ the applicant's siblings, and from ██████████ and ██████████ the applicant's parents, state that in August 1980 the applicant and her three siblings, came to the United States

with their uncle [REDACTED] and his wife, [REDACTED] when he came to the United States on a diplomatic mission; that they lived with [REDACTED] and his family in Gaithersburg until 1984 when [REDACTED] and another uncle, [REDACTED] rented an apartment for them in Silver Spring, Maryland; that in December 1986 they visited their uncle in London and then returned to the United States with Mr. [REDACTED] that they were informed that [REDACTED] had tried to obtain documentation for the applicant and her siblings under the amnesty provisions but were unsuccessful because of their 1986 trip to London. The declarants also state that the applicant and her siblings lived together in the United States until March [REDACTED] when they returned to Gambia for [REDACTED] funeral and stayed there because they could not get documents to return to the United States legally.

- 5) A declaration from [REDACTED] dated October 4, 2005, stating that she was born in Jamaica in 1976, and that to the best of her recollection she was informed by her mother, a friend of the applicant's family, that in August 1980 the applicant and three siblings came to the United States and lived with friends in Gaithersburg, Maryland; and that the applicant and her siblings resided in the United States from August 1980 until March 1988. [REDACTED] also states that she resided in Jamaica until July 12, 1988 when she and her family moved to the United States.

The declarants state that the applicant resided in the United States from August 1980 to March 1988. However, they do not provide details, such as the terms of the applicant's and her three siblings' living arrangements with [REDACTED] from August 1980 to 1984, and the terms of their living arrangements from 1984 to March 1988 when they returned to the Gambia. It is noted that in August 1980 the applicant was 10 years old, her sister, [REDACTED] was 11 years old, [REDACTED] was 12 years old, and [REDACTED] was 6 years old. No details are provided to indicate how the applicant and her three minor siblings were cared for, particularly between 1984 and 1988 while they claimed they lived in an apartment by themselves in Silver Spring, Maryland. In addition, the record lacks supporting documentation, such as school records, and travel records, to support the applicant's claim, and the applicant does not provide an explanation why such records, which should be readily available, are not provided.

It is also noted that in her declaration, [REDACTED] states that she and her family resided in Jamaica until July 12, 1988 when they immigrated to the United States, and she bases her declaration on information that her mother told her and does not indicate having any direct knowledge of the applicant's residence during the requisite period. Also, [REDACTED] does not provide details, such as to indicate how her mother gained knowledge of the applicant's residence in the United States during periods while they were living in Jamaica. Also, there is no basis in the record to determine how the declarant's mother gained knowledge that the applicant resided in Maryland from August 1980 to 1988.

In addition, the applicant claims, and several of the declarants attest, that the applicant entered the United States in August 1980, departed for England in December 1986, and returned to the United States with her sister and [REDACTED]. However, there is no evidence of record to indicate the manner of the applicant's re-entry and whether she was authorized to stay in the United States when

she returned from London. Therefore, we cannot determine whether the applicant was in unlawful status throughout the requisite period.

Further, although the applicant was 10 years old and of school age at the time of her claimed entry into the United States, the applicant does not submit any elementary school records, or high school records, which should be easily obtainable. No additional documentation, such as medical records, or evidence to indicate the applicant's claimed residence in the United States during the requisite period has been submitted.

This complete lack of reliable evidence casts doubt on whether the applicant resided in the United States from August 1980 to March 1988, as she claims. 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 applicant has failed to submit any objective evidence to explain or justify the discrepancies in her testimony and in the record. Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it must be concluded that the applicant has failed to establish that she continuously resided in the United States in an unlawful status during the requisite period.

As stated previously, 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 amenability to verification. Given the applicant's reliance upon documents with minimal probative value, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982, through May 4, 1988.

Based on the foregoing analysis of the evidence, the AAO concludes that the applicant has failed to establish her continuous unlawful residence in the United States throughout the requisite period. Thus, the record does not establish that the applicant entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from that date through the date she attempted to file a Form I-687 during the original one-year application period that ended on May 4, 1988. Accordingly, the applicant is ineligible for temporary resident status under section 245A(a)(2) of the Act.

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