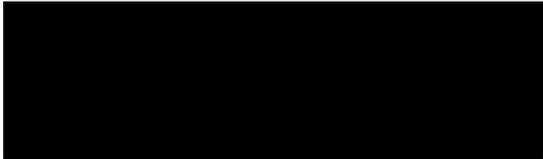


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AUG 07 2007

FILE: [REDACTED]
MSC-05-174-10757

Office: NEW YORK

Date:

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. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, 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 District Director, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined the applicant had not demonstrated that she had continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that she attempted to file a Form I-687, Application for Status as a Temporary Resident, with the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS) in the original legalization application period of May 5, 1987 to May 4, 1988. Therefore, the director determined that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and denied the application.

On appeal, the applicant asserts she has lived in the United States since prior to January 1, 1982. The applicant maintains that she submitted documents in support of her application.

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 (Act), 8 U.S.C. § 1255a(a)(2).

An applicant applying for adjustment to temporary resident status must 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).

For purposes of establishing residence and presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the alien attempted to file a completed Form I-687 application and fee or was caused not to timely file, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

An alien applying for adjustment of status 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. See 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.* 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 (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 has furnished sufficient credible evidence to demonstrate that she resided in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application with the Service in the original legalization application period of May 5, 1987 to May 4, 1988. Here, the submitted evidence is not relevant, probative, and credible.

The record shows that the applicant filed a Form I-687, Application for Status as a Temporary Resident, and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, with CIS on March 23, 2005. Part 30 of the application requests the applicant to provide all of her residences in the United States since her first entry. The first address the applicant provided on this part of the application is that she resided in Brooklyn, NY from 1997 until 2005. The applicant failed to indicate her street address during this time period. Moreover, the applicant failed to provide any other address information prior to 1997. Part 33 of the application requests the applicant to provide her employment in the United States since entry. The applicant responded that she was self-employed in the occupation of “business” from 1981 until 1996. The applicant failed to provide any information on her specific occupation in “business” and the location of her self-employment. It should be noted that the application testified during her Form I-687 interview on February 6, 2006 that she first entered the United States in April 1981. The information provided by the applicant on her Form I-687 application lacks considerable detail and fails to corroborate her claim of residence in the United States since April 1981.

The applicant has the burden of proving by a preponderance of the evidence that she has resided in the United States for the requisite period. 8 C.F.R. § 245a.2(d)(5). The regulation at 8 C.F.R. § 245a.2(d)(3) provides and illustrative list of documentation that may be provided to establish proof of continuous residence in the United States during the requisite period. This list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts, or letters. The applicant failed to provide any of these documents in support of her claimed continuous residence in the United States.

An applicant may also submit "any other relevant document." 8 C.F.R. § 245a.2(d)(3)(vi)(L). The applicant filed in support of her application copies of two notarized statements from [REDACTED] and [REDACTED]. However, these two statements fail to contain relevant, probative and credible testimony of the applicant's residence in the United States during the requisite period.

The statement from [REDACTED] provides that he has known the applicant since 1982. This statement fails to provide detailed information on the beginning of [REDACTED] acquaintance with the applicant and his knowledge of the applicant's continuous residence in the United States. The statement provides that [REDACTED] is the godfather of the applicant's daughter, [REDACTED], who was born in 1990. The statement fails to provide any other information regarding [REDACTED]'s relationship with the applicant prior to this date. Moreover, the statement provides that [REDACTED] has personal knowledge of the applicant's residence at [REDACTED], Brooklyn, NY from 1996 until January 2006 and [REDACTED] Brooklyn, NY from 1981 until 1988. This information is inconsistent with the applicant's Form I-687 application, which provides that the applicant resided at [REDACTED] Brooklyn, NY from 2005 until present and at an unknown street address in Brooklyn, NY from 1997 until 2005. Furthermore, this statement does not contain [REDACTED]'s phone number to verify his testimony.

The statement from [REDACTED] provides that she resided at the same apartment building with the applicant at [REDACTED], Brooklyn, NY from August 1981 until April 1983. However, the applicant failed to provide this address on her Form I-687 application. Additionally, this statement does not contain any details on the beginning of [REDACTED] acquaintance with the applicant and their subsequent contact during the period of August 1981 until April 1983. Furthermore, this statement does not contain [REDACTED]'s phone number to verify her testimony.

Based on the above noted discrepancies, these two statements do not satisfy the applicant's burden of proof. As stated above, 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). The applicant has been given the opportunity to satisfy her burden of proof with a broad range of evidence pursuant to 8 C.F.R. § 245a.2(d)(3). The applicant submitted two notarized statements to satisfy her burden of proof. Prior to the denial of the application, the applicant was issued a Notice of Intent to Deny (NOID), where she was provided thirty (30) days to submit additional evidence. The director's NOID provides, "you have failed to submit credible documentation which would constitute a preponderance of the evidence as to your residence in the United States during the statutory time period." The applicant responded to the NOID by submitting her "Affidavit of Entry and Continuous Residence in the U.S." The applicant's notarized statement provides, "I make this affidavit to serve as documentary evidence of my 1981 entry and continuous residence in the United States from 1981 to May 1988." To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. 8 C.F.R. § 245a.2(d)(6). Therefore, this statement does not provide credible evidence of the applicant's continuous residence in the United States during the requisite period. The applicant also submitted in response to the NOID, the birth certificate of her child and letters from her employer. However, these documents are not relevant evidence of the applicant's residence in the United States during the requisite period. The applicant's child was born on October 22, 1990 and her employer's letters indicate that she has been employed since October 28, 1996; both of these dates are outside the requisite period.

The director's notice of decision to deny the application provides, "[t]he only documents you have submitted were testimonials in the form of boilerplate affidavits from [redacted] and [redacted]. These affidavits are neither credible nor amenable to verification, in addition to lacking probative value. . . Furthermore, you have failed to provide any tangible evidence or credible documentation to attest to your claimed presence here during the statutory time frame of January 1, 1982 through May 4, 1988." On appeal, the applicant claims that she has provided documents to support the credibility of her application. The applicant's failure to provide any other evidence to establish her continuous residence in the United States during the requisite period renders a finding that the applicant has failed to satisfy her burden of proof, as required by 8 C.F.R. § 245a.2(d)(5). The applicant has not submitted sufficient evidence to establish that her claim is "probably true" pursuant to *Matter of E-M-, supra*.

The absence of sufficiently detailed supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of this 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 she has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application 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.