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AUG 13 2007

FILE: [REDACTED]  
MSC-06-003-14149

Office: LOS ANGELES

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.

  
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, Los Angeles, 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 that she has lived in the United States since prior to January 1, 1982. The applicant also submits additional evidence to corroborate her claim of residence in the United States.

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. 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 she 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 October 3, 2005. Part 30 of this application requests the applicant to provide all of her residences in the United States since her first entry. The applicant responded that she resided at [REDACTED] Rosemead, CA from February 1981 until February 1985; and [REDACTED] Artesia, CA from February 1985 until July 1997. The information the applicant provided on her application indicates that she has continuously resided in the United States during the requisite period. However, the applicant's claim is not supported by credible and probative evidence.

The applicant has submitted various documents in support of her claim of continuous residence in the United States. Since the issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that she resided in the United States during the requisite period, the focus of this decision will be on documents submitted to establish

continuous residence from prior to January 1, 1982 through the date she attempted to file a Form I-687 application with the Service in the original legalization application period. 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 applicant has submitted the following documents in support of her residence in the United States during the requisite period: a copy of a kindergarten progress report issued for the school year 1985 to 1986; a copy of a kindergarten class picture for the school year 1985 to 1986; and a copy of a B2 visitor visa and I-94 card indicating an entry date of January 20, 1985. These documents are credible and probative evidence of the applicant's residence in the United States subsequent to January 1985. However, the applicant has failed to provide any documentation of her residence in the United States prior to this date. On appeal, the applicant asserts, "I did in fact entered [sic] the U.S. illegally sometime in 1981 . . . I did entered [sic] to the U.S. sometime in 1981 and left to China in 1984 and returned to the U.S. in 1985." To meet her burden of proof, an applicant must provide evidence of eligibility apart from her own testimony. 8 C.F.R. § 245a.2(d)(6). The applicant has not provided any evidence apart from her own testimony that she resided in the United States prior to January 1985.

The applicant submitted a copy of her B2 visitor visa, issued by the United States consulate in Hong Kong on October 23, 1984. The applicant's Form I-94 indicates that she used her B2 visa to enter the United States on January 20, 1985. The applicant's record contains a G-325A, Biographic Information Form, signed October 3, 1997, which corroborates this information. This form requests the applicant to provide her last address outside of the United States of more than one year. The applicant responded that she resided in Taipei, Taiwan from October 1984 until January 1985. On appeal, the applicant attempts to explain the inconsistencies in her record. The applicant provided, "I misunderstood the questions that were asking for information of my first entry into the U.S. on the applications that I previously filed. I always thought that the only way I was able to proof [sic] my entry into the U.S., it [sic] was with the arrival stamp in the passport."

The applicant's explanation has raised another issue regarding her eligibility for temporary resident status. An applicant for temporary residence 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). An alien shall be regarded as having resided continuously in the United States if at the time of filing an application for temporary resident status, no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, through the date the application is filed, unless the alien can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the alien was maintaining residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.1(c). The applicant's B2 visa and Form G-325A indicate that she was absent from the United States from October 1984 until January 1985. Pursuant to 8 C.F.R. § 245a.1(c), if the applicant's absence exceeds the 45-day period allowed for a single absence, it must be determined if the

untimely return of the applicant to the United States was due to an "emergent reason." Although this term is not defined in the regulations, *Matter of C-*, defines emergent as "coming unexpectedly into being." 19 I&N Dec. 808 (Comm. 1988). The applicant has failed to indicate that there was an emergent reason for her absence to exceed the 45-day period allowed for a single absence. Therefore, even if the applicant established residence in the United States since prior to January 1, 1982, she would be ineligible for temporary resident status based on this break in continuous residence.

Moreover, the applicant's record contains a copy of the back of her Form I-94, which indicates that she legally resided in the United States subsequent to her January 20, 1985 entry. The Form I-94 provides that on July 26, 1985, the applicant changed her nonimmigrant status from a B-2 visitor to an L-2 dependent, valid until July 15, 1988. On June 13, 1988, the applicant again changed her nonimmigrant status from an L-2 dependent to an F-1 student, valid for the duration of status. The regulation at 8 C.F.R. § 245a.2(c)(3) provides that eligibility for temporary resident status pertains to an alien who establishes that he or she entered the United States as a nonimmigrant prior to January 1, 1982, and whose unlawful status was known to the Government as of January 1, 1982, and who has thereafter resided continuously in the United States in an unlawful status, and who has been physically present in the United States from November 6, 1986, until the date of filing the application. The word "Government" means the United States Government. An alien who claims his unlawful status was known to the Government as of January 1, 1982, must establish that prior to January 1, 1982, documents existed in one or more government agencies so, when such documentation is taken as a whole, it would warrant a finding that the alien's status in the United States was unlawful. *Matter of P-*, 19 I. & N. Dec. 823 (Comm. 1988). Based on the information contained in the applicant's Form I-94, she has failed to establish unlawful residence in the United States subsequent to her January 20, 1985 entry.

The applicant's Form I-687 application indicates that her date of birth is July 8, 1980 and her first date of entry into the United States was in February 1981. During the applicant's legalization interview, she testified that she does not know answers to questions because she was "a baby" when she entered the United States. Even if the applicant established her residence in the United States prior to January 1, 1982, she has failed to establish that her residence was continuous. Moreover, the applicant has failed to establish that her residence was in an unlawful status during the entire requisite period. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the District Office does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

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 she 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.