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FILE: [REDACTED]
MSC 05 251 36474

Office: LOS ANGELES

Date: DEC 12 2007

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 "R. 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, Los Angeles, and 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 determined 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. The director denied the application, finding that the applicant had not met her burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, the applicant submits additional evidence and reasserts her claim regarding her residence in the United States during the statutorily relevant time period.

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). 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).

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 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. In support of the claim, the applicant submitted the following:

1. An undated letter from [REDACTED] manager of [REDACTED], claiming that the applicant was employed by that organization from January 1987 to "the present." The applicant's annual salary was also provided.
2. A declaration from the applicant dated April 4, 1992, claiming that she had lost her foreign passport at a supermarket.
3. An affidavit dated April 8, 1992 from [REDACTED] stating that she/he has known the applicant for nine years. The affiant provided the applicant's U.S. address from July 1985 to September 1988. No further verifiable information was provided.
4. An affidavit dated April 24, 1992 from [REDACTED] attesting to the applicant's U.S. residence from October 1988. The affiant offered no information that applies to the statutorily relevant time period from prior to January 1, 1982 through the date the applicant attempted to file a Form I-687 application.
5. An affidavit dated April 8, 1992 from [REDACTED] attesting to the applicant's residence from April 1980 to June 1985. The affiant provided the applicant's address during that time period. No further verifiable information was provided.
6. Copies of the applicant's federal and state tax returns for 1986 and the first page of the applicant's federal tax returns for 1983, 1984, and 1985 as well as the corresponding state tax returns for those years.

After reviewing the supporting documentation, the director determined that favorable action was not warranted. Therefore, the director issued a decision dated June 6, 2006 denying the application. The director noted that during the applicant's May 19, 2006 legalization interview, the applicant was unable to remember the names of any of the affiants that attested to her residence or the employer, whose undated employment letter was provided in support of the application.

On appeal, the applicant reiterates her claim, asserting that sufficient evidence has been provided to establish her residence in the United States during the requisite time period. The applicant explains that she was nervous during her legalization interview and suggests that this was the reason she was unable to remember the names of the affiants who submitted affidavits on her behalf. However, the record lacks sufficient evidence to otherwise support the applicant's claim. While the AAO acknowledges the applicant's submission of signed tax returns from 1983 to 1986, these documents cannot be deemed contemporaneous as there is no evidence that the tax returns were actually filed with the Internal Revenue Service. Additionally, while the applicant provided two residence affidavits, one to account for the time period from 1980 to 1985 and another to account for the time period from 1985 to 1988, both affidavits lack verifiable information with the exception of the applicant's residential address during each of the time periods in question. Neither affiant discussed the nature of his/her relationship with the applicant, the frequency of either affiant's contact with the applicant, or any of the events or circumstances of the applicant's life during either time period.

Further, regarding past employment records, 8 C.F.R. § 245a.2(d)(3)(i) regulation states that letters from employers must be on employer letterhead stationery, if the employer has such stationery, and must include: (1) alien's address at the time of employment; (2) exact period of employment; (3) periods of layoff; (4) duties with the company; (5) whether or not the information was taken from official company records; and (6) where records are located and whether the Service may have access to them. In the present matter, the employment letter submitted falls short of these regulatory criteria. Specifically, not only is the employment letter undated, but no mention was made of the applicant's address during the time of employment or the source of the information provided. Thus, it is unclear whether the information was obtained from employment records and if so, where those employment records may be found.

Lastly, on appeal, the applicant submitted copies of the first page for each of two phone bills, both containing the applicant's name and address at the top of the page. One statement was dated June 23, 1982 and the other was dated April 23, 1983. Both statements listed the applicant's Alhambra, California address. However, the authenticity of the latter statement is questionable in light of its reference to payments received on August 22. It is unclear why an April statement would reference to payments that were purportedly received eight months earlier. As the applicant did not submit the original phone statements, the documents cannot be further analyzed to establish their validity. Moreover, even if the authenticity of the phone bills were not in question, these documents only account for two months of the applicant's U.S. residence. The applicant's residence in the United States during the remainder of the relevant statutory time period is supported with deficient employment letters and affidavits that lack sufficient verifiable information.

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*, 20 I&N Dec. 77. 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.