



U.S. Citizenship
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Services

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[REDACTED]

FILE: [REDACTED] Office: New York
MSC 04 318 10425

Date: **JUL 11 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:

[REDACTED]

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

The district director determined that 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 between May 5, 1987 to May 4, 1988. Therefore, the district director concluded 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, counsel asserts that the applicant has submitted sufficient evidence to establish her claim of continuous residence in the United States during the requisite period.

An alien applying for adjustment to temporary resident status must establish that he or she entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through the date the application is filed. Section 245A(a)(2)(A) of the Immigration and Nationality Act (Act) and 8 C.F.R. § 245a.2(b).

An alien 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 and 8 C.F.R. § 245a.2(b)(1).

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. *See* Paragraph 11, page 6 of the CSS Settlement Agreement and paragraph 11, page 10 of the Newman Settlement Agreement.

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 including affidavits 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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to establish continuous residence 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 from May 5, 1987 to May 4, 1988. Here, the submitted evidence is not relevant, probative, and credible.

The record shows that the applicant submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on August 13, 2004. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant listed [REDACTED] in Brooklyn, New York from 1985 through at least the date of the termination of the original legalization application period on May 4, 1988. The fact that the applicant failed to list any residences in this country prior to 1985 seriously undermined the credibility of her claim that she resided in the United States since prior to January 1, 1982. Further, at part #31 of the Form I-687 application where applicants were asked to list all affiliations or associations with clubs, organizations, churches, unions, businesses, etc., in the United States, the applicant listed “None.”

The record contains photocopied pages from the applicant’s Haitian passport that reflect that she entered the United States as a B-2 visitor at New York, New York, on February 2, 1985. The

record also contains a photocopy of the birth certificate of the applicant's son, [REDACTED] which reflects that he was born in Brooklyn, New York on February 20, 1986. However, such documentation can only be considered as evidence that the applicant resided in this country after February 5, 1985.

In support of her claim of continuous residence in the United States since prior to January 1, 1982, the applicant submitted three affidavits that are all dated July 13, 2004 and signed by [REDACTED], [REDACTED], and [REDACTED] respectively. All three affiants stated that they had known the applicant for the past sixteen years. All three affiants noted that they first met the applicant at the Jerusalem Church of Lord in Brooklyn, New York and that they remained acquainted as friends since. All three affiants declared that they knew the applicant immigrated to the United States and stayed here illegally since the early 1980's. As the three affiants testified that they had known the applicant for some sixteen years from the date the affidavit was executed on July 13, 2004, such testimony reflects that they first met the applicant in approximately July of 1988. However, none of the affiants provided any explanation as to how they had knowledge of the applicant's continuous residence in the United States from the early 1980's unless such knowledge was derived from what the applicant had told them about her residence in this country because all three affiants testified that they and the applicant did not meet until approximately July of 1988.

The applicant included an affidavit signed by [REDACTED] who testified that he first met the applicant when she arrived in this country from Haiti in the early 1980's. [REDACTED] asserted that he and the applicant had maintained a close friendship and remained in each other's lives since such date. However, [REDACTED] failed to attest to any specific and verifiable information, such as the applicant's address(es) of residence, relating to the applicant's residence in this country for the requisite period.

The applicant provided an affidavit that is signed by [REDACTED]. [REDACTED] stated that she first met the applicant when she arrived in this country from Haiti in the early 1980's. [REDACTED] indicated that she and the applicant had maintained a close friendship and remained in each other's lives since such date. However, [REDACTED] failed to provide any testimony that is amenable to verification and would tend to corroborate her claim of residence in the United States since prior to January 1, 1982.

The applicant submitted an affidavit signed by [REDACTED] who declared that he first met the applicant when she first arrived in the United States in the early 1980's. [REDACTED] indicated that the applicant was the sister of his wife and that his wife supported the applicant financially when she came to this country. However, [REDACTED] failed to attest to any direct and verifiable information, such as the applicant's address(es) of residence, relating to the applicant's residence in this country for the requisite period.

The applicant included an affidavit that is signed by [REDACTED]. [REDACTED] indicated that the applicant was her sister and that she provided her with food, shelter, clothes, and financial assistance when she first arrived in the United States in the early 1980's. [REDACTED] declared that

the applicant stayed in this country illegally since such date. However, [REDACTED] failed to provide any specific and verifiable testimony, such as the applicant's address(es) of residence, that would tend to corroborate her claim of residence in the United States since prior to January 1, 1982. In addition, the probative value of the testimony contained in the affidavit signed by [REDACTED] is further limited in that [REDACTED] has acknowledged that she is the applicant's sister, an immediate family member who must be viewed as having an interest in the outcome of proceedings, rather than an independent and disinterested third party.

On March 8, 2006, the district director issued a notice of intent to deny to the applicant informing her of CIS's intent to deny her application because she failed to submit sufficient credible evidence of continuous unlawful residence in the United States from January 1, 1982 through May 4, 1988. Although the district director noted that the record contained contradictions and discrepancies relating to locations that the applicant resided after the end of the requisite period on May 4, 1988, the relevance of such conflicts is minimal as they relate to a period other than that from prior to January 1, 1982 to May 4, 1988. The applicant was granted thirty days to respond to the notice.

In response, the applicant submitted a letter containing the letterhead of the "Shekinah Haitian Seventh-day Adventist Church" in Norwich, Connecticut that is dated March 31, 2006. This letter is signed by [REDACTED] who listed his position as pastor of this religious institution. [REDACTED] declared that the applicant had been attending church services regularly for the last five years. However, [REDACTED] failed to provide any testimony that the applicant resided in this country during the requisite period.

The district director determined that the applicant failed to submit sufficient credible evidence demonstrating her residence in the United States in an unlawful status from January 1, 1982 through May 4, 1988, and, therefore, denied the Form I-687 application on May 5, 2006.

On appeal, counsel asserts that the applicant has submitted sufficient evidence to establish her claim of continuous residence in the United States during the requisite period. However, the evidence submitted by the applicant relating to her residence in the United States from prior to January 1, 1982 to May 4, 1988 lacks sufficient detail and contains no verifiable information to corroborate her claim of residence in this country for the requisite period.

The absence of sufficiently detailed supporting documentation containing testimony that is amenable to verification seriously undermines the credibility of the applicant's claim of residence in this country for the requisite period, as well as the credibility of the documents submitted in support of such 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. The applicant has failed to submit sufficient credible documentation to meet her burden of proof in establishing that she has resided in the United States since prior to January 1, 1982 by a preponderance of the evidence as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M-*, 20 I&N Dec. at 77.

Given the applicant's failure to provide sufficient credible evidence to corroborate her claim of residence 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 as required under section 245A(a)(2) of the Act. 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.