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FILE:

MSC 05 237 12070

Office: BOSTON

Date:

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IN RE:

Applicant:

**MAY 23 2007**

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:

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. [REDACTED] C.D. Cal) February 17, 2004, (CSS/Newman Settlement Agreements) was denied by the District Director, Boston, Massachusetts, 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 (the Service), now Citizenship and Immigration Services (CIS), in the original legalization application period from 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 contends that the district director “expressly violated the terms” of the CSS/Newman Settlement Agreements by denying the application based only on the applicant’s failure to submit evidence other than an affidavit to establish entry into the United States prior to January 1, 1982 and continuous residence in this country from that date to May 4, 1988.

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. *See* 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. *See* 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 he 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 May 25, 2005. At block #30, where applicants are instructed to list all residences in the United States since initial entry, the applicant indicated that she lived at “[redacted] Worcester, Massachusetts,” from 1981 to 1984 and at “[redacted] Worcester, Massachusetts” from 1984 to 1991. At block #33, where applicants are instructed to list all employment since arrival in the United States, the applicant indicated that she has been self-employed as a hair braider in Worcester, Massachusetts, from 1981 to the present.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted an affidavit dated January 9, 2006, from [REDACTED] who identifies herself as the applicant's mother. Ms. [REDACTED] states that she and the applicant entered the United States without inspection from Mexico in 1980. She further states that she and the applicant lived at [REDACTED] Worcester, Massachusetts" from 1981 to 1984 and at [REDACTED] Worcester, Massachusetts" from 1984 to 1988. Ms. [REDACTED] indicates that she never enrolled the applicant in school because she feared the applicant's unlawful status would be discovered by federal authorities. Ms. [REDACTED] indicates that she returned to Kenya to live in 1988, but the applicant remained in this country.

On May 25, 2006, the applicant appeared at the Boston, Massachusetts, District Office for her legalization interview. The applicant stated under oath during her interview that she and her mother first entered the United States from Mexico without inspection in 1980. The applicant further stated that she never attended school or sought medical service at a hospital in the United States. The applicant did not submit any additional evidence to establish her continuous residence in the United States during the requisite period.

On appeal, counsel contends that the district director violated the terms of the CSS/Newman Settlement Agreements by denying the application because the applicant submitted only affidavits to establish her continuous residence in the United States throughout the requisite period.

As stated above, affidavits may be submitted as proof of continuous residence in the United States. However, the applicant has submitted only one affidavit from her mother, an interested party, to corroborate her claim of entry into the United States prior to January 1, 1982, and continuous residence in this country from that date to May 4, 1988. The applicant has not submitted any independent evidence to corroborate her mother's statement. The CSS/Newman Settlement Agreements do not require CIS to approve all applications supported only by affidavits. Rather, the agreements stipulate that applications will not be denied solely because the applicant failed to provide evidence other than affidavits.

In this case, the district director denied the application because the applicant failed to submit any supporting documentation other than her mother's affidavit to corroborate her claim of continuous residence in the United States throughout the requisite period. This lack of supporting documentation seriously detracts from the credibility of the applicant's 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 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 reliance upon documents with minimal probative value, it is concluded that he 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.