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U.S. Citizenship
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Services

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FILE:



Office: New York

Date: **NOV 29 2007**

MSC 05 197 12678

IN RE:

Applicant:



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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter 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 "D. Long".

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 [REDACTED] *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. The decision 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, on April 15, 2005. 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 as 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 reiterates her claim that she is class member under the terms of the CSS/Newman Settlement Agreements. The applicant submits a new affidavit in support of her claim of residence in this country for the requisite 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 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). The regulations clarify that the applicant must have been physically present in the United States from November 6, 1986 until the date of filing the application. 8 C.F.R. § 245a.2(b)(1).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "until the date of filing" shall mean until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

The applicant 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 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. [REDACTED]* 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.

As noted above, the applicant submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on April 15, 2005. 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 New York, New York from October 1981 through at least 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.

In support of her claim of residence in the United States since prior to January 1, 1982, the applicant submitted an affidavit that is signed by [REDACTED] stated that he had personal knowledge the applicant resided at [REDACTED] in New York, New York from October 1981 through at least the date she attempted to file a Form I-687 application with the Service in the original legalization application period ending May 4, 1988 because he and the applicant lived in the same building. While [REDACTED] attested to the applicant’s purported address of residence in this country for the requisite period, he failed to provide any further verifiable and detailed testimony relating to her continuous residence in the United States since prior to January 1, 1982.

On March 7, 2006, the district director issued a notice of intent to deny to the applicant informing her of CIS's intent to deny his application. Specifically, the district director noted that this was based upon the applicant's failure to submit sufficient credible evidence of continuous unlawful residence in the United States from prior to January 1, 1982. The applicant was granted thirty days to respond to the notice.

In response, the applicant submitted a statement in which she asserted that she is eligible for class membership under the terms of the CSS/Newman Settlement Agreements. However, the applicant's eligibility as a class member is not at issue in the current proceedings, but rather the fact that she has failed to submit sufficient credible evidence of continuous unlawful residence in the United States from prior to January 1, 1982. While the applicant also included documentation and biographic information relating to the affiant, [REDACTED] she failed to provide any additional documentation to corroborate her claim of residence in this country for the requisite period.

The district director determined that the applicant failed to establish her residence in the United States in an unlawful status from prior to January 1, 1982 and, therefore, denied the Form I-687 application on May 4, 2006.

On appeal, the applicant reiterates her claim that she is class member under the terms of the CSS/Newman Settlement Agreements.

The applicant includes a new affidavit signed by [REDACTED] the same individual who previously provided an affidavit of residence with the Form I-687 application. [REDACTED] asserts that the applicant and her family have lived in the Harlem neighborhood in New York, New York from 1981 through to the present. [REDACTED] notes that he is very well acquainted with the applicant's mother as they had all resided in the same building on [REDACTED] in New York, New York. Although [REDACTED] essentially reiterates information attested to in his previous affidavit, he fails to provide any additional detailed and verifiable information relating to the applicant's residence in this country in the requisite period.

The lack of sufficiently detailed evidence that provides relevant and material testimony to corroborate the applicant's claim of continuous residence for the period in question 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. The applicant has failed to submit sufficient probative documentation to meet his 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, 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.