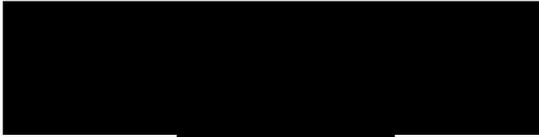


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FILE: [REDACTED]
MSC-06-101-10546

Office: NEW YORK

Date: OCT 05 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 "D. King" or similar, with a large flourish at the end.

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, and that decision 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. The Notice of Intent to Deny (NOID) from the director of the National Benefits Center states that the applicant failed to provide any evidence that she entered the United States before January 1, 1982 and then resided in a continuous unlawful status except for brief absences for the duration of the requisite period, that she maintained continuous physical presence in the United States except for brief, casual and innocent departures from November 6, 1986 and then through the remainder of the requisite period and that she was admissible as an immigrant. The director stated that because the applicant had failed to provide this evidence, she had not met her burden of establishing that she was eligible to adjust status to that of a Temporary Resident. The director of the National Benefits Center granted the applicant thirty (30) days within which to submit additional evidence in support of her application. In denying the application, the director of the New York District stated that though her office did receive additional evidence from the applicant, this evidence was insufficient to overcome the grounds for denial as stated in the NOID as the evidence submitted was one (1) affidavit that the director found neither credible nor amenable to verification. In saying this, the director stated that credible affidavits are those which include some document identifying the affiant, proof that the affiant was in the United States during the statutory period, proof that there was a relationship between the application and the affiant and a current phone number at which the affiant may be contacted to verify information in the affidavit. The director noted that here, the affidavit submitted was found lacking with regards to these criteria. The director further noted that the applicant submitted a photocopy of her passport, which was issued in Tianjin, China on January 16, 2002. As the applicant indicated on her Form I-687 that she had not left the United States at any point in time between 1987 and February 2002, the director found that this cast doubt on the applicant's having fully and truthfully represented her absences on her Form I-687. 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 the affidavit she submitted was from a United States Citizen who was living in the United States for the duration of the requisite period. She submits receipts pertaining to the requisite period and she also attempts to account for the contradictions pertaining to the issuance of her previously submitted passport.

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) and 8 C.F.R. § 245a.2(b)(1).

Applicants who are eligible for adjustment to temporary resident status are those who establish that he or she entered the United States prior to January 1, 1982, and who have thereafter resided continuously in the United States in an unlawful status, and who 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).

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, during the original legalization application period of May 5, 1987 to May 4, 1988, 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 applicant 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).

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 submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on January 9, 2006. 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 showed her address for the duration of the requisite period to be [REDACTED] from December of 1981 until May of 1995. At part #32 she showed two absences from the United States. Her first absence occurred in August of 1987 and ended that same month and her second and final absence as shown on her Form I-687 began and ended in February of 2002. At part #33, the applicant was asked to show her employment in the United States since January 1, 1982. Here she showed that she has worked as a vendor on the corner of Canal Street and Broadway from December of 1981 until the time she signed her Form I-687.

The applicant has the burden of proving by a preponderance of the evidence that she has resided in the United States for the requisite period. 8 C.F.R. § 245a.2(d)(5). 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 regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that an applicant may submit to establish proof of continuous residence in the United States during the requisite period. This list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts or letters. An applicant may also submit any other relevant document pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided one (1) affidavit.

The affidavit from [REDACTED] provides the affiant's telephone number and address and states that the affiant first met the applicant in 1981 when she was selling things as a vendor on Broadway Street. The affiant goes on to say that the applicant was a popular vendor. The affiant provided a photocopy of her birth certificate and photocopies of a social security card and a voter registration card that is in Spanish. Though the affiant states that she met the applicant in 1981, she fails to indicate the date on which she met the applicant. She also fails to indicate whether she knows if the applicant resided in the United States continuously for the duration of the requisite period. She further fails to state the frequency with which she saw the applicant or to indicate the dates through which it is personally known to her that the applicant was working as a vendor or whether there were periods of time during which she did not see the applicant during the requisite period. The affiant also does not provide any evidence that she herself was physically present in the United States for the duration of the requisite

period. Because this affidavit is found significantly lacking in detail it can only be afforded very minimal weight in establishing that the applicant maintained continuous residence in the United States for the duration of the requisite period.

Though it does not pertain to the requisite period, it is noted that the applicant also submitted a photocopy of her passport, issued on January 16, 2002 in Tianjin, China. It follows that the applicant would have had to present documents to Chinese authorities in China before that date to obtain this passport. It is noted that the applicant stated in part #32 of her Form I-687 that she did not leave the United States at any point in time between August of 1987 until February of 2002. Because this passport was issued in China on a date that the applicant indicates she was not in China, doubt is cast on whether the applicant fully and truthfully represented her absences on her Form I-687 both during and after the requisite period.

Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

In denying the application the director noted the above, and stated that the evidence submitted by the applicant was not sufficient to meet the applicant's burden of establishing, by a preponderance of the evidence that she maintained continuous residence for the duration of the requisite period

It is noted that it has been held that while it is reasonable to expect an applicant who has been residing in this country since prior to January 1, 1982, to provide some documentation other than affidavits, the absence of contemporaneous documentation is not necessarily fatal to an applicant's claim to eligibility. Although the Service regulations provide an illustrative list of contemporaneous documents that an applicant can submit, the list also permits the submission of affidavits and "[a]ny other relevant document. If a legal conclusion of a director were to be made that an applicant could meet his burden of proof by his "own testimony and that of unsupported affidavit," this would be inconsistent with the both 8 C.F.R. § 245a.2(d)(3)(iv)(L) and *Matter of E- M--*, *supra*.

However, here, as was previously stated, the affidavit submitted by the applicant was significantly lacking in detail and it alone is not sufficient to establish by a preponderance of the evidence, that the applicant maintained continuous residence for the duration of the requisite period.

On appeal the applicant attempts to explain these contradictions. She states that the affiant from whom she submitted the affidavit is an American Citizen who has lived in the United States from before the statutory period and is still living in the United States. It is noted that the applicant did not provide evidence that the affiant continuously resided in the United States for the duration of the requisite period or to provide evidence that the affiant had regular, uninterrupted contact with the applicant during that time and therefore would personally know that she continuously resided in the United States for the duration of the requisite period.

The applicant goes on to say that the existence of a passport issued in China on a date before the applicant states she left the United States is not a discrepancy. She asserts that she left the United States in January of 2002 after the passport was issued. It is noted here that this is inconsistent with previous statements made to the Service as applicant showed on her Form I-687 that she left in February 2002 rather than January of 2002.

The applicant also submits the following additional documentation in support of her application:

- A receipt from Good Luck Jewelry on Canal Street in New York dated May 14, 1985. This receipt does not indicate who paid this bill or otherwise provide evidence that it is associated with the applicant. Therefore, no weight can be given to this receipt as evidence that the applicant continuously resided in the United States for the duration of the requisite period.
- A receipt from C.K. and L Surplus Company dated February 4, 1987. Although the applicant has not associated dates with her absence, it is noted that the applicant stated on her Form I-687 that she left the United States in February of 1987. This receipt does not indicate who paid this bill or otherwise provide evidence that it is associated with the applicant. Therefore, no weight can be given to this receipt as evidence that the applicant continuously resided in the United States for the duration of the requisite period.
- A receipt from an establishment called Nobody Beats the Wiz. This receipt is dated October 1986 and the name associated with it is not legible. However, the address of the person who made the purchase is in Astoria. It is noted here that the applicant showed on her Form I-687 that she has always lived in Brooklyn. This receipt does not provide evidence that it is associated with the applicant. Therefore, no weight can be given to this receipt as evidence that the applicant continuously resided in the United States for the duration of the requisite period.
- A receipt from Chinatown Lumber dated December 12, 1986. This receipt does not provide evidence that it is associated with the applicant. Therefore, no weight can be given to this receipt as evidence that the applicant continuously resided in the United States for the duration of the requisite period.

As is stated above, 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). The applicant has been given the opportunity to satisfy her burden of proof with a broad range of evidence pursuant to 8 C.F.R. § 245a.2(d)(3). Here, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period that can be clearly associated with her. She has submitted an attestation from only one person concerning that period and this affidavit was found lacking in detail. Though the applicant submitted additional evidence in support of her appeal, for the reasons stated above, no weight can be given to those documents as evidence that the applicant maintained continuous residence in the United States

during the requisite period as there is nothing that indicates that the evidence, in the form of four (4) receipts, are associated with the applicant.

The absence of sufficiently detailed 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 he 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.