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U.S. Citizenship
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Services

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[REDACTED]

FILE:

MSC-05-133-11184

Office: LOS ANGELES

SEP 06 2007
Date:

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, Los Angeles, 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. Specifically, the director stated that the applicant submitted only one affidavit as evidence and that while this affidavit indicated that the affiant had seen the applicant in the United States in December of 1981, it and statements made by the applicant alone did not establish by a preponderance of the evidence that the applicant had resided continuously in the United States for the duration of the requisite period. 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 submits a brief. In this brief she reiterates testimony given during her interview with the CIS officer, asserting that she entered the United States before January 1, 1982 with her father and that her father attempted to apply for legalization during the original application period in August 1987 but was prevented or discouraged from doing so. The applicant then argues that though she only submitted one affidavit and W-2 Forms from 2003, 2004 and 2005, these documents and the testimony she gave during her interview of establish by a preponderance of the evidence that she maintained continuous residence in the United States during 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 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 February 10, 2005. Part # 30 of this application requests the applicant to list all of her residences in the United States since her entry. The applicant responded that during the requisite period, she resided at [REDACTED] California from November 1981 until January 1985. She then indicated that she lived at [REDACTED] in Los Angeles, California from January 1985 until February 1988. Part # 32 of this application requests the applicant to list all absences from the United States since January 1, 1982. Here, the applicant showed one absence during the requisite period, from December 1986 to December 1987. Part # 33 of this application requests the applicant to list her employment in the United States since her entry. The applicant responded that she was self-employed from December of 1981 until January of 1988 selling

jewelry from door to door. The applicant did not indicate an address associated with her self-employment on her Form I-687.

At her interview with a CIS officer on March 3, 2006, the applicant stated that while her Form I-687 indicates that her absence from the United States was from December 1986 until December 1987, this absence was actually from December 1986 until January 1987.

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 document that is relevant to the requisite period, an affidavit.

The affidavit from Lito Laynes was signed and notarized on February 27, 2006 and provides that the affiant has known the applicant since December of 1981 when the applicant and her father spent Christmas with the affiant at his home in East Palo Alto, California. The affiant goes on to say that he saw her again in 2001 in the Philippines and then again in 2002 when the applicant came to stay with him at his home in California. The affiant provides addresses at which he states the applicant resided in the United States for the requisite period. Though not required to do so, the affiant has provided proof that he entered the United States before the requisite period, identity documents and other documents that indicate that he resided continuously in the United States during the requisite period. In this affidavit, the affiant failed to explain how he is able to confirm that the affiant continuously resided in the United States for the duration of the requisite period, when he indicates that he only saw the applicant once during that time, in December of 1981. Though the affiant provides addresses for the affiant during the entire requisite period, he fails to establish how he could have personal knowledge that the applicant continuously resided at these addresses during the requisite period. As a result of the lack of detail provided in this affidavit, it is accorded only limited weight.

The applicant also submitted a California Driver's License issued in October of 2004, a photocopy of four (4) pages of her passport that include a copy of her B1/B2 Visa issued on May 24, 1999, and W-2 Forms from 2003, 2004 and 2005. However, the issue in this proceeding is the applicant's residence in the United States during the requisite period. As she states that her father attempted to originally file his Form I-687 in August of 1987, which indicates that the requisite period for this applicant is January 1,

1982 until August of 1987. Because these additional documents verify the applicant's presence in the United States subsequent to the requisite time period, they are not relevant evidence for this proceeding.

In denying the application the director noted the above, and reiterated that the applicant failed to meet her burden of proof by a preponderance of the evidence that she had continuously resided in the United States during 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 the affidavit submitted does not establish that the applicant maintained continuous residence in the United States during the requisite period. The affiant did provide documentation that indicates he was continuously physically present in the United States during the requisite period. Nevertheless, his affidavit does not establish that the affiant could have had personal knowledge that the applicant continuously resided in the United States during the requisite period as his affidavit clearly states that he saw the applicant once during Christmas of 1981 and then did not ever see her again during the requisite period.

Truth is to be determined not by the quantity of evidence alone, but by its quality. The regulations specifically state that the evidence will be judged by its probative value and credibility. Therefore, the application of the "preponderance of the evidence" standard may require the examination of each piece of relevant evidence and a determination as to whether such evidence, either by itself or when viewed within the totality of the evidence, establishes that something to be proved is probably true. 8 C.F.R. § 245a.2(d)(6) and *Matter of E- M--*, *supra*.

In determining the weight of an affidavit, it should be examined first to determine upon what basis the affiant is making the statement and whether the statement is internally consistent, plausible, or even credible. Most important is whether the statement of the affiant is consistent with the other evidence in the record. *Matter of E- M--*, *supra*.

Here, the affidavit from Lito Laynes does not establish that the affiant could credibly provide testimony to establish that the applicant continuously resided in the United States during the requisite period. This affidavit is from an individual who has not established that the basis upon which he personally knows that that applicant resided continuously in the United States.

On appeal the applicant refers to her timely and complete response to the director's request for evidence in which she was requested to supply the director with Employment W-2 Forms for the last few years, proof of the affiant's residence in the United States before 1982, a phone number for the affiant and proof of the affiant's identity. This request was made on a Form I-72. While the applicant did supply the director with a timely and complete response to this Form I-72 request, her brief goes on to say that the director indicated that, "No additional evidence of continuous residence during the early required periods . . . was requested." While such information was not requested in the Form I-72, the director's decision clearly states that that reason for her decision to deny the applicant's Application for Temporary Resident Under Section 245A of the INA is that the applicant failed to meet her burden of proof by a preponderance of the evidence that she resided in the United States during the requisite period. The applicant's brief does not address this issue. Rather, it requests that her application be remanded so that the applicant can provide additional evidence that she resided in the United States for the requisite period. However, she does not provide any such evidence with her appeal.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period, and has submitted attestations from only one person concerning that period. Though this affidavit indicates that the affiant has personal knowledge that the applicant entered the United States before January 1, 1982, it does not establish that she continuously resided in the United States for the duration of the requisite period. The applicant did not submit any additional evidence to establish that she had maintained continuous residence in the United States with her appeal.

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 one document 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.