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U.S. Citizenship  
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SEP 06 2007

[REDACTED]

FILE:

MSC-05-174-10423

Office: CLEVELAND (COLUMBUS) 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:

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.

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, Cleveland. 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 March 23, 2005. The director determined that the applicant had not demonstrated that she had continuously resided in the United States in an unlawful status for 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 asserts that the process by which her application was denied was not fair because the interviewers had their minds made up before the applicant entered the room and they did not give her time to respond fully to questions. The applicant also asserts that it is not fair to request proof that is 20 years old and which she did not keep, and that the affidavits she provided are sufficient. The applicant did not submit any additional documentation.

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 from November 6, 1986 until the date of filing. Section 245A(a)(3) of the Act, 8 U.S.C. § 1255a(a)(3).

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), "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. 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 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. See 8 C.F.R. § 245a.2(d)(6). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The credibility of an affidavit may be assessed by taking into account such factors as whether the affiant provided a copy of a recognized identity card, such as a driver's license; whether the affiant provided some proof that he or she was present in the United States during the requisite period; and whether the affiant provided a valid telephone number. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

Even if the director has some doubt as to the truth, if the applicant 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 establish her continuous unlawful residence and continuous physical presence in the United States for the requisite periods. Here, the submitted evidence consists of one affidavit and one statement which is neither notarized nor signed under oath. These statements are not sufficient. They are not relevant, probative and credible.

The record contains statements from two individuals in support of the applicant's claim that she entered the United States in 1981 and resided unlawfully in the United States during the requisite period:

- (1) A statement, which is not notarized or signed under oath, dated December 3, 2005 from [REDACTED] of Columbus, Ohio. It is accompanied by an Ohio "Temporary Instruction ID Card," issued in 2005. She states that she met the applicant in New York in 1984, that she was referred to the applicant while she was at a hair show in New York and visited the applicant at her place of business, which was her home in a room at the Bryant Hotel on Broadway. She states that she reunited with the applicant when the applicant moved to Columbus, Ohio in 1999. The statement lacks any details of her relationship with the applicant during the requisite period other

than the one meeting in New York; and no indication that she ever resided in New York or how she could be aware of the applicant's continuous residence during the requisite time period. She does not claim any knowledge of the applicant's whereabouts before 1984. The lack of detail detracts from the credibility of the statement; the lack of a notarized affidavit also diminishes the weight of the statement. The statement is also inconsistent with the applicant's claim that she did not move to Columbus until 2001, as indicated on the applicant's I-687 application.

- (2) An affidavit dated March 6, 2006 from [REDACTED] accompanied by her Ohio Driver License, issued in 2004, noting her Columbus address. The affiant claims to have met the applicant more than 15 years ago when the applicant resided in New York at [REDACTED] and operated a hair braiding shop. She states that the applicant relocated to Cincinnati in 1997 and then to Columbus. As with the statement of [REDACTED], the affidavit fails to provide sufficient detail of the affiant's knowledge of and relationship with the applicant that would lend credibility to her statements. She also provides no indication that she ever resided in New York or how she could be aware of the applicant's continuous residence during the requisite time period. She does not claim any knowledge of the applicant's whereabouts before the date she claims to have met her "more that 15 years ago," which would be an undesignated date prior to 1991. Moreover, as the applicant indicated on her I-687 application that she moved to [REDACTED] in 1988, the meeting would not have taken place before that date, and the affiant's statements are irrelevant as evidence of the applicant's residence in the United States during the requisite period.

The affidavit and statement described above lack relevance, probative value and credibility for the reasons noted. Together they comprise, along with the applicant's own statements, the only documentation provided by the applicant as evidence of her residence in the United States for the requisite period. These documents are insufficient to support a conclusion that the applicant entered the United States before 1982 and resided in the United States for the requisite period.

The absence of sufficiently detailed supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite period detracts from the credibility of her 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 paucity of credible supporting documentation and the applicant's reliance upon one statement and one affidavit, documents lacking probative value, it is concluded that she has failed to meet her burden of proof and failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the date she 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.