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U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE: [REDACTED] MSC-05-354-12643

Office: NEW YORK

Date: SEP 07 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:  
[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, 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. Specifically, the director noted that the applicant did not provide evidence of her claimed May 1981 entry and did not establish by a preponderance of the evidence that she resided continuously in an unlawful status in the United States for the duration of the requisite period. The director further noted that she found that the applicant did not demonstrate that she attempted to apply for legalization during the original filing period and was turned away for reasons that would qualify the applicant to be considered a CSS/Newman class member. Rather, the director found the applicant's testimony indicated she chose not to apply because she did not feel she had enough evidence to do so. The director found this testimony contradicted her statement on the CSS/Newman worksheet, where she showed that she was turned away from an INS or QDE. 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.

In this case, the director adjudicated the Form I 687 application on the merits. As a result, the director is found not to have denied the application for class membership.

On appeal, the applicant submits a brief and an affidavit. In her brief she asserts that evidence previously submitted and an additional affidavit establish that she continuously resided in the United States from May of 1981 throughout the requisite period, with only one brief absence that occurred in March of 1983.

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 September 19, 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 showed her first address in the United States during the requisite period to be [REDACTED] from May 1981 to March 1985. She then showed that she lived at [REDACTED] from March 1985 to October of 1987. The third and final address shown by the applicant as a residence during the requisite period was [REDACTED]



the United States after the date that visa expired until sometime in March of 1983. However, nothing in the record explains how she was able to obtain another B2 visa and then re-enter the United States after overstaying that previously issued B2 visa.

- A photocopy of a photograph featuring what appears to be two women with "81 8 31" written at the bottom of the page. The women appear in front of two buildings. Though the photocopy of the photograph appears to indicate that the photograph was taken on October 31, 1981, it is not clear who the pictured women are or where the photograph was taken. Therefore, it does not clearly establish that the applicant was present in the United States during the requisite period.

It is noted that the applicant also provided bank statements, W-2 forms from 2001, 2002, 2003, and 2004, a receipt from 1994, a photocopy of a passport issued to the applicant in 2004, and a New York identification card issued to the applicant in 2002. Because these documents verify the applicant's presence in the United States subsequent to the requisite time period, they are not relevant evidence for this proceeding.

The director issued a NOID to the applicant on April 13, 2006. In her NOID, the director explained that the applicant had not demonstrated eligibility for the benefit sought. Specifically, the director found that evidence submitted by the applicant did not establish that she entered the United States before January 1, 1982 or that she continuously resided in the United States after that entry. The director further stated that the applicant's testimony regarding her voluntary decision not to apply for legalization during the initial filing period contradicted what she had indicated on her Form I-687 Supplement, CSS/Newman Class Membership Worksheet, where she showed that she was discouraged from filing.

In response to the director's NOID, the applicant's attorney submitted a letter. In this letter, the applicant states that: she should not be penalized for failing to possess items that would establish her entry to the United States twenty-five (25) years ago; that her I-94 card is consistent with her Form I-687 application; and that there appeared to be a miscommunication between the applicant and the officer at the time of the applicant's interview with regards to whether the applicant was discouraged from filing for legalization during the original application period. The applicant states that she believed that she told the officer that she went to an INS office to inquire about the amnesty program in June of 1987 but was told that she would be ineligible because she had traveled outside of the United States in March of 1983 and returned that same month with a valid visa. Therefore, the applicant indicates that she went to an INS office with the intent of filing for legalization but was discouraged from doing so.

In denying the application on May 15, 2006, the director noted that while the applicant's attorney submitted a letter in response to her NOID, the applicant submitted no additional documents with that response. The director stated that she reviewed the letter submitted by the applicant's attorney but that the assertions made in this letter alone did not overcome the grounds for the denial as stated in the NOID. In her decision, the director noted that the response to her NOID suggested that the Service consider the applicant's twenty-three (23) year old I-94 card showing a March 1993 entry to be sufficient to establish, by a preponderance of the evidence, that the applicant entered the United States before January 1, 1982 and resided continuously for the duration of the requisite period. The director also states that she

finds it inconsistent that the applicant has this I-94 card which was issued twenty-three (23) years ago but claims it is unreasonable that she should have kept other evidence from that same time period. The director goes on to say that assertions in the letter submitted in response to the NOID do not overcome her previously noted inconsistencies regarding whether the applicant attempted to file for legalization during the initial filing period.

On appeal the applicant attempts to explain these contradictions. She furnishes a brief and a notarized letter from [REDACTED]

The applicant's brief is in the form of a letter written by the applicant. In it, the applicant quotes the CSS/Newman Settlement agreement which states that the Service should take into account the passage of time and difficulties that an applicant might have obtaining corroborative documentation of unlawful residence during the requisite period. The applicant also states that she submitted a number of photographs, some dated as early as 1981 as well as her I-94 card with her application. It is noted that the record contains a photocopy of only one photograph. As previously noted, it is not clear where this photograph was taken or who is pictured in it. Though the director adjudicated the applicant's Form I-687 on the merits and therefore is found not to have denied the application on the basis of class membership, the applicant asserts that she is a class member under the CSS/Newman Settlement Agreement because she was informed that she was not eligible to apply when she attempted to do so during the original filing period.

The letter from [REDACTED] is notarized and states that [REDACTED] met the applicant in the United States during Chinese New Year's in 1985. [REDACTED] goes on to say that he has maintained contact with the applicant on holidays and birthdays and when they have time off from work since meeting her in 1985. It is noted that [REDACTED] does not indicate the frequency of his meetings with the applicant and he fails to provide an address at which he personally knows the applicant resided during the requisite period. [REDACTED] states that he knows that the applicant arrived in the United States in 1981 but he does not indicate how he could know this, as he previously stated in this letter that he did not meet the applicant until 1985. [REDACTED] states that it is personally known to him that the applicant attempted to apply for legalization during the original legalization period but was discouraged from doing so. [REDACTED] provides a phone number at which he can be reached and indicates that he is willing to come forward to verify information in the notarized letter if he is asked to do so. Though he is not required to do so, [REDACTED] provides a New York State driver's license as proof of his identity.

Though [REDACTED] claims to have known the applicant since 1985, he does not provide evidence that he was physically present in the United States at that time with this letter. Because this letter pertains to only part of the requisite period as [REDACTED] did not meet the applicant until 1985, because [REDACTED] has not established that he was in the United States for the duration of the requisite period, and because [REDACTED] does not provide an address at which it is personally known to him that the applicant resided continuously during the requisite period, this letter can be accorded only minimal weight at establishing that the applicant entered the United States before January 1, 1982 and maintained continuous residence throughout the requisite period.

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).

Though the regulation provides the above noted extensive list of types of evidence that the applicant was permitted to submit to establish that she maintained continuous residence in the United States during the requisite period, the applicant submitted one I-94 card indicating that she entered the United States in March of 1983, one photocopy of a photograph that does not clearly indicate that it was taken in the United States or who is pictured in it, and one affidavit that is relevant to only part of the requisite period.

Further, though it was not noted in the director's decision, the CIS officer's notes from the interview with the applicant appear to indicate that the applicant's testimony regarding when and where she resided during the requisite period was not consistent with what she provided in her Form I-687 application. Therefore, doubt is cast on whether the applicant resided at the addresses she showed on that application during the requisite period.

In summary, the applicant has not provided any contemporaneous evidence of residence or employment in the United States relating to the 1981-88 period, and has submitted an attestation from only one person concerning only part of that period. She did not submit any evidence to establish that she had maintained continuous residence in the United States throughout the duration of the requisite period.

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 two documents, neither of which pertain to the entire requisite period, 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.