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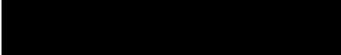
**U.S. Citizenship
and Immigration
Services**

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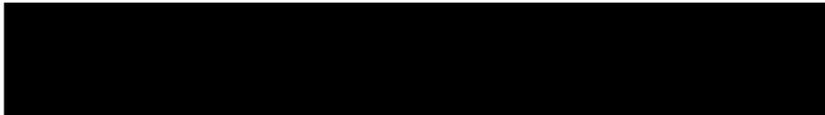
MSC-05-238-12765

Office: LOS ANGELES

Date: **SEP 14 2007**

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. 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 "Robert P. Wiemann".

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. Specifically, the director noted in her Notice of Intent to Deny (NOID) that documents submitted by the applicant in support of her claim that she had continuously resided the United States in an unlawful status during the requisite period did not establish, by a preponderance of the evidence, that she did so. The director further noted that at the time of her interview with a CIS officer, the applicant stated that the first time she entered the United States she did so lawfully with a valid United States visa in November of 1981 and was therefore still in lawful status on January 1, 1982. Though the applicant was afforded thirty (30) days from the date of the director's NOID to submit additional evidence in support of her application she did not do so. 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 formal statement in which she asserts that she did maintain continuous residence unlawfully for the duration of 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 in an unlawful status 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 May 26, 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 addresses in the United States during the requisite period to be: [REDACTED] Los Angeles from November 1981 until August 1986; and [REDACTED] Van Nuys, California from August 1986 until February 1988. At part #32 when the applicant was asked to list all of her absences from the United States, she stated that she was absent once during the requisite period from February to January [sic] in 1987. At part #33, where the applicant was asked to list her employment in the United States since January 1, 1982, she showed that she was employed as a care giver from December of 1981 until February of 1988. Here, the applicant did not indicate an address associated with that employment but indicated that it was in Los Angeles, California.

At her interview with a CIS officer on October 28, 2005, the record shows that the applicant testified that she first entered the United States in November of 1981 with a valid United States B2 visa. The record also contains a sworn statement submitted by the applicant at the time of her interview. In this sworn statement that applicant showed that she first entered the United States in November of 1988 [sic] and then was absent from the United States from January to February of 1987. The applicant goes on to say that she re-entered the United States using a different name in February of 1987 and then stayed in the United States until returning to the Philippines in February 1988.

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).

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided a copy of her birth certificate, photocopies of pages of her current passport, a photocopy of her employment authorization card from 2005, and a photocopy of her marriage certificate from the Philippines showing she was married in 1978. The issue in this proceeding is the applicant's residence in the United States during the requisite time period. Because the submitted documents do not verify the applicant's presence in the United States during the requisite time period, they are not relevant evidence for this proceeding.

Thus, on the application, which the applicant signed under penalty of perjury, she showed that she resided and worked in the United States since before January 1, 1982. However, the applicant has not submitted evidence in support of this claim. 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).

As previously noted, the regulation at 8 C.F.R. § 245a.2(d)(6) clearly states that the applicant is required to submit evidence other than her own testimony to establish that she maintained continuous residence during the requisite period. Here, the applicant did not submit any documents to support her claim of having maintained continuous residence in the United States during the requisite period. Therefore, the applicant has not satisfied this requirement.

In denying the application the director noted the above, and the fact that the applicant's claim at the interview to have commenced residing in the United States legally with a valid B2 visa in November of 1981 cast doubt on her claim of having maintained an unlawful status in the United States illegally before January 1, 1982. It is noted that the United States Embassy in Manila, Philippines indicates on its website that B-1/B-2 visas issued to Philippine citizens currently are generally valid for five (5) years and for multiple entries.

On appeal the applicant submits a formal statement in which she states that she first entered the United States in November of 1981 and maintained continuous residence in the United States until February of 1988. The applicant claims that she attempted to file for legalization during the initial filing period, but was discouraged from doing so. The applicant did not submit additional evidence in support of her claim of having maintained continuous residence in an unlawful status 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. She did not submit any additional evidence to establish that she had maintained continuous residence in the United States with her appeal.

Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

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). The applicant submitted did not submit any corroborating evidence of her continuous residence during the requisite period to satisfy her burden of proof.

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 that the applicant not submitted any evidence in support of her claim of having maintained continuous residence in the United States during the requisite period, it is concluded that she has failed to establish by a preponderance of the evidence that she maintained 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.