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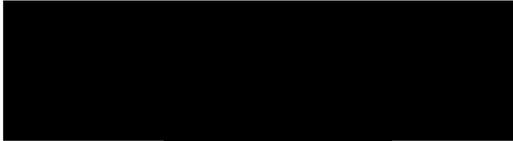
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
and Immigration
Services

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FILE: [Redacted]
MSC 06 095 13576

Office: NEW YORK

Date: SEP 28 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:



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, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director determined the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that he 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. Therefore, the district 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, counsel states that the applicant has submitted affidavits from individuals who have personal knowledge of her 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).

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, 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 alien 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. 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.

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 3, 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 indicated that she resided at [REDACTED] Queens, New York" from January 1981 to September 1984 and at [REDACTED] New York" from September 1984 to September 1988.

At her interview with a CIS officer on March 29, 2006, the applicant stated that she first entered the United States on January 15, 1981, at the age of 14 with her aunt, [REDACTED]

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted an affidavit dated July 23, 1990, from [REDACTED] a resident of Brooklyn, New York. [REDACTED] stated that he had known the applicant "for a long time." He explained that he met the applicant in a restaurant and had kept in touch with her ever since.

However, [REDACTED] failed to provide any information as to how he met the applicant, the frequency of his contact with the applicant, or the applicant's addresses in the United States during the requisite period.

The applicant also submitted an affidavit dated June 9, 1990, from [REDACTED] a resident of Bronx, New York. [REDACTED] stated that he had known the applicant since she first arrived in this country in 1981. He explained that he met her at the Islamic Center and they became friends. However, [REDACTED] failed to provide relevant and verifiable testimony such as the applicant's addresses in the United States during the requisite period to corroborate her claim.

The applicant included a fill-in-the-blank affidavit dated June 1, 1990 from [REDACTED] a resident of Brooklyn, New York. The affiant indicated at the upper left corner of the affidavit that the affidavit related to [REDACTED]. However, in the body of the affidavit Mr. [REDACTED] provided information relating to his acquaintance with [REDACTED]. Therefore, this affidavit will be given no evidentiary weight.

The applicant provided an affidavit dated June 27, 1990, from [REDACTED] a resident of Bronx, New York. [REDACTED] stated that he had known the applicant "for a long time." He explained that he met her at a birthday party and they have been friends since that time. However, [REDACTED] failed to provide any information as to when he met the applicant, the frequency of his contact with the applicant, or the applicant's addresses in the United States during the requisite period. Therefore, this affidavit will be accorded little evidentiary weight.

The applicant submitted a letter dated March 2, 2006, from [REDACTED] stated that he had known the applicant since 1981. However, [REDACTED] failed to provide any information as to how he met the applicant, the frequency of his contact with the applicant, or the applicant's addresses in this country during the requisite period.

The applicant included a letter dated February 26, 2006, from [REDACTED] a resident of Jamaica, New York. [REDACTED] stated that he had known the applicant since 1986. However, Mr. [REDACTED] failed to provide any information as to how he met the applicant, the frequency of his contact with the applicant, or the applicant's addresses in the United States during the requisite period.

The applicant provided a letter dated March 1, 2006, from [REDACTED] stated that he first met the applicant in 1981 at a party and they became friends. However, [REDACTED] failed to provide any information as to how he met the applicant, the frequency of his contact with the applicant, or the applicant's addresses in the United States during the requisite period.

The applicant also provided a letter dated January 30, 2006, from [REDACTED] a resident of Bronx, New York. [REDACTED] stated that he met the applicant through family connections in 1985. However, [REDACTED] failed to provide any information as to how he met the applicant, the

frequency of his contact with the applicant, or the applicant's addresses in the United States during the requisite period.

On April 10, 2006, the district director informed the applicant of her intent to deny the application because the applicant had not provided sufficient evidence to corroborate her claim of continuous residence in the United States during the requisite period. The district director granted the applicant 30 days to submit additional evidence to corroborate her claim.

Counsel, in response, reiterated the applicant's claim of continuous residence in the United States during the requisite period and stated that the affidavits submitted by the applicant in support of her claim are "bona fide and genuine." Counsel asserts that the affidavits should be given favorable consideration. However, counsel did not submit any additional evidence in support of the applicant's claim.

The district director denied the application on March 12, 2007, because the applicant failed to submit sufficient evidence to corroborate her claim of continuous residence in the United States during the requisite period.

On appeal, counsel once again states that the applicant has submitted affidavits that are "bonafide and credible." Counsel reiterates his statement that the applicant has submitted sufficient evidence to establish continuous residence in the United States during the requisite period. However, counsel failed to submit any additional evidence to corroborate the applicant's claim.

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 various individuals that lack sufficient verifiable detail to corroborate the applicant's claim.

The absence of sufficiently detailed supporting 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 he 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.