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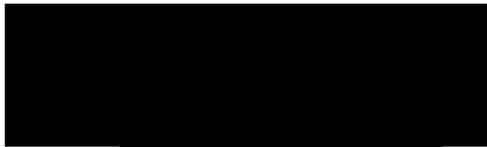
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
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FILE: MSC-05-244-15048

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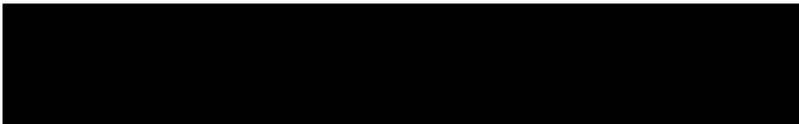
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IN RE: Applicant:



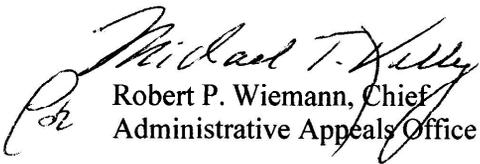
APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:



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. 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 June 1, 2005 (together, the I-687 Application). The director determined that the applicant had not established by a preponderance of the evidence that she had continuously resided in the United States in an unlawful status for the duration of the requisite period, specifically noting that “the information and documentation [that the applicant] submitted are insufficient to overcome the grounds for denial.” 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.

The director’s decision also noted that the applicant submitted copies of affidavits already in the record of proceeding, but did not address the deficiencies in those affidavits as discussed in the director’s notice of intent to deny. The director stated that the applicant did not submit “primary or secondary evidence of [her] physical presence or unlawful residence in the United States during the statutory period.”

On appeal, counsel asserts that the applicant does not have primary documents of her legal entry into Mexico in August 1981 or of her entry without inspection into the United States. Counsel states that 25 years have passed since the applicant entered the United States and that the applicant was not aware of the value of the documents. Counsel also states that the “applicant moved to different location[s] during that time, renting usually rooms, living for a long time out of her suitcases.” On appeal counsel resubmits evidence already in the record of proceeding.

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 since November 6, 1986. Section 245A(a)(3) of the Act, 8 U.S.C. § 1255a(a)(3). The regulations clarify that the applicant must 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).

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)(1), “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. 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.2(d)(6).

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 some proof that he or she was present in the United States during the requisite period. 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 demonstrate that she entered before 1982 and resided in the United States for the requisite period.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on June 1, 2005. At part #30 of the Form I-687 application where applicants are asked to list all residences in the United States since first entry, the applicant listed her first address in the United States as [REDACTED] Brooklyn, New York, from August 1981 to March 1985. At part #33, she listed her first employment in the United States as home attendant for [REDACTED] in Brooklyn, New York, from November 1981 to November 1988.

The applicant has provided two affidavits, income tax returns, two Form I-94 cards, a letter from the Internal Revenue Service (IRS), a telephone bill, and an electric bill. Some of the evidence submitted indicates that the applicant resided in the United States after her entry on September 27, 1987 with a visitor's visa and is not probative of residence before that date. The following evidence relates to the requisite period:

A notarized statement executed by [REDACTED] who states that he resides in Brooklyn, New York. Mr. [REDACTED] states that he lived with the applicant from August 1981 to March 1985 when he lived on [REDACTED] in Brooklyn, New York. The statement does not supply enough details to lend credibility to a 25-year relationship with the applicant. The declarant does not indicate under what circumstances he met the applicant in 1981, how he dates his initial acquaintance with the applicant, or how frequently he had contact with the applicant. Given these deficiencies, this statement has minimal probative value in supporting the applicant's claims that she entered the United States in 1981 and resided in the United States for the entire requisite period.

A notarized statement executed by [REDACTED] who states that she resides in Brooklyn, New York. Ms. [REDACTED] states that she met the applicant in November 1981 when the applicant began working for her aunt [REDACTED]. According to the affiant, the applicant worked for [REDACTED] until November 1988. She states that she and the applicant are friends and have "remained in touch ever since." The statement does not supply enough details to lend credibility to a 25-year relationship with the applicant. The declarant does not indicate how she dates her initial acquaintance with the applicant, or how frequently she had contact with the applicant. Given these deficiencies, this statement has minimal probative value in supporting the applicant's claims that she entered the United States in 1981 and resided in the United States for the entire requisite period.

For the reasons noted above, the documents submitted in support of the applicant's claim have been found to lack credibility or to have minimal probative value as evidence of the applicant's residence and presence in the United States for the requisite period. Although the applicant has

submitted several income tax returns, a September 15, 1997 letter from the IRS, and two utility bills, none of the evidence provided establishes that the applicant was physically present or had continuous residence for the requisite period. The record indicates that the applicant entered the United States with a valid visa on September 27, 1987, but the evidence submitted does not support a conclusion that she resided in the United States before that date.

The director issued a notice of intent to deny (NOID) on March 8, 2006 and denied the application for temporary residence on July 24, 2006. In denying the application, the director found that the applicant failed to establish that she entered the United States prior to January 1, 1982 or that she met the necessary residency or continuous physical presence requirements. Thus, the director determined that the applicant failed to meet her burden of proof by a preponderance of the evidence.

On appeal, neither counsel nor the applicant provide additional information or evidence in support of the applicant's claim that she was physically present or had continuous residence in the United States during the entire requisite period or that she entered the United States in 1981. In his appeal brief, counsel states that one of the reasons for not being able to provide evidence is that the "applicant moved to different location[s] during that time, renting usually rooms, living for a long time out of her suitcases." However, on the Form I-687, the applicant lists one address from August 1981 to March 1985. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Furthermore, the applicant submitted a notarized statement from [REDACTED] stating that he lived with her during that time period. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In this case, the absence of sufficient credible and probative documentation to corroborate the applicant's claim of continuous residence for the requisite period seriously 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 lack of credible supporting documentation, it is concluded that the applicant has failed to establish by a preponderance of the evidence that she has continuously resided in an unlawful status in the United States for the requisite period, 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.