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FILE: 
MSC-06-097-11019

Office: CHICAGO

Date: **APR 04 2006**

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. If your appeal was dismissed or rejected, all documents have been returned to the National Records Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

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, Chicago. 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. The director determined that the applicant had not established by a preponderance of the evidence that she meets the requirements for temporary resident status. The director noted that the applicant was admitted to the United States as a tourist on September 25, 1989. The director erroneously concluded that the applicant's period of lawful status, which began in September 1989, interrupted her continuous residence in an unlawful status during the requisite period. The director also stated that the applicant's university in the United States confirmed that the applicant had attended university in the Philippines at the time when the applicant claimed to have been home-schooled by her aunt in the United States.

On appeal, counsel for the applicant explained that the CSS/Newman Settlement Agreements do not require that the applicant establish continuous unlawful residence past May 4, 1988. Counsel also stated that the applicant's intent to immigrate violated her status upon entry in 1989. Lastly, counsel asserted that the applicant had submitted fraudulent documents to gain admission to her university in the United States. It is noted that, without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The record contains no evidence that the applicant submitted fraudulent documents to obtain admission to her university. The assertions of counsel regarding information not appearing in the record, of which counsel has no personal knowledge, will not be considered.

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).

For purposes of establishing residence and physical presence under the CSS/Newman Settlement Agreements, the term "until the date of filing" in 8 C.F.R. § 245a.2(b) means until the date the applicant 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. 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 period, 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).

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.* at 80. 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, 431 (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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet her burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on January 5, 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 listed only [REDACTED] San Diego, California from April 1981 to December 1988 during the requisite period. At part #31 where applicants were asked to list all affiliations or associations, clubs, organizations, churches, unions, businesses, et cetera,

the applicant listed only First United Methodist Church in National City, California from April 1981 to December 1991. At part #32 where applicants were asked to list all absences from the United States since entry, the only absence listed during the requisite period appears to have been added at the applicant's request during her interview with an immigration officer and indicates that the applicant took a trip to the Philippines during 1983 for ten days for her brother's surgery. At part #33 where applicants were asked to list all employment in the United States since entry, the applicant listed no employment during the requisite period.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided voluminous documentation, most of which does not relate to the requisite period.

The applicant provided attendance sheets listing her name and covering the school years from the month of September to the month of June between September 1981 and June 1989. She also provided a certificate of completion for the ACE Program listing her name and dated July 7, 1989. These documents fail to include the applicant's address, contain no other geographical identifiers, and are otherwise unverifiable. As a result, these documents are given no weight in determining whether the applicant resided in the United States during the requisite period.

The applicant provided a copy of an immunization record listing her name and indicating that she received vaccinations at the University of California San Diego Medical Group on August 3, 1981; September 8, 1981; February 25, 1982; and March 18, 1982. This document constitutes some evidence that the applicant was present in the United States on the above listed four dates.

The applicant provided a color photocopy of three pendants from the United Methodist Church. Since the pendants do not contain the applicant's name or the geographical location of the church, and since the United Methodist Church exists outside of the United States, the copy of the pendants is not relevant to the determination of whether the applicant resided in the United States during the requisite period.

The applicant included color copies of multiple photographs. The copies are labeled listing popular vacation locations throughout the United States and dates from March, April, May, and June 1983; and June 1987. The locations include Honolulu, the Grand Canyon, the Hoover Dam, Universal Studios, Disneyland, New York City, and San Diego. The photographs do not provide a means of identifying the dates on which they were taken, and there is nothing that identifies the applicant as a subject of the photographs. Many of the photos appear to have been taken in a private residence and, therefore, provide no means of identifying that they were taken in the United States. As a result, the photographs are found not to be relevant to the determination of whether the applicant resided in the United States during the requisite period.

The applicant provided a copy of her Bachelor of Arts diploma from Olivet Nazarene University in Kankakee, Illinois issued in 1994. Since this document was issued outside of the requisite period, it is not directly relevant to the determination of whether the applicant meets the residency requirements for temporary resident status. However, it is noted that CIS contacted Olivet Nazarene

University and was informed that the applicant had attended the University of the Philippines in 1987, 1988 and 1989. This information is inconsistent with the applicant's Form I-687, where she indicated that she resided continuously in the United States until December 1988, except for a ten day visit to the Philippines in 1983. This inconsistency casts serious doubt on the applicant's claim to have resided in the United States throughout the requisite period.

The applicant provided a declaration from Reverend [REDACTED], resident pastor of First United Methodist Church in National City, California. This declaration states that the applicant has been a member of the church from 1981 to 1991. This declaration does not conform to regulatory standards for attestations by churches, unions, or other organizations as stated in 8 C.F.R. § 245a.2(d)(3)(v). Specifically, the declaration does not state the address where the applicant resided during the membership period, does not establish how the author knows the applicant, and does not establish the origin of the information being attested to.

The applicant provided a declaration from [REDACTED] and [REDACTED], which states that Mr. and Mrs. [REDACTED] became legal guardians of the applicant "on or about" 1981, the year when the applicant entered the United States to begin her residence. This declaration fails to state that the applicant resided in the United States at any other time than in 1981.

The applicant provided three form declarations that were unsigned and, therefore, hold no evidentiary weight. These include the form declarations from [REDACTED] and [REDACTED]. The applicant also submitted a form declaration from [REDACTED], which fails to state that the applicant resided in the United States during the requisite period.

The applicant provided multiple form declarations from relatives and acquaintances who resided in the Philippines during the requisite period. The declaration from [REDACTED] fails to provide detail regarding the dates during which the applicant resided in the United States, the region where the applicant resided in the United States, and whether the declarant had any contact with the applicant while the applicant was in the United States. The declaration from [REDACTED] fails to provide detail regarding when the applicant came to the United States and the declarant's frequency of contact with the applicant while the applicant was in the United States. The declarations from [REDACTED] and [REDACTED] lack detail regarding when the applicant arrived in the United States, the region where the applicant resided in the United States, and the frequency of the declarant's contact with the applicant while the applicant was in the United States. The declaration from [REDACTED] fails to provide any information regarding how the declarant knows that the applicant resided in the United States during the requisite period. The declaration from [REDACTED] lacks detail regarding the region where the applicant resided in the United States; his frequency of telephone or mail contact with her, if any; and when the applicant entered the United States, particularly since the declarant stated that he accompanied the applicant on her first entry to the United States. Considering that none of these declarants was present with the applicant in the United States during the requisite period, each declaration is found to lack sufficient detail to confirm that the applicant resided in the United States during the requisite period.

The applicant also provided a form declaration from [REDACTED], who also resided in the Philippines during the requisite period. This declaration also fails to provide detail regarding the region where the applicant lived during the requisite period and whether the declarant had contact with the applicant by phone or mail during the requisite period. As a result, this declaration is found to lack sufficient detail to confirm that the applicant resided in the United States during the requisite period. In addition, the declaration states that the declarant has “not seen [the applicant] since she left in 1982.” This statement conflicts with the applicant’s Form I-687, which indicates that she began residing in the United States in 1981, rather than in 1982. In addition, the declarant’s statement directly contradicts the applicant’s claim to have entered the United States prior to January 1, 1982. These inconsistencies call into question whether the applicant actually resided in the United States throughout the requisite period.

The record includes an additional Form I-687 application signed by the applicant under penalty of perjury on February 20, 1990. At part #33 of this Form I-687 where applicants were asked to list all residences in the United States since first entry, the applicant listed only [REDACTED], Los Angeles, California from May 1981 to November 1989 during the requisite period. This information is inconsistent with the current Form I-687, where the applicant indicated she lived only at the [REDACTED] address during the requisite period. At part #34 of the 1990 Form I-687 where applicants were asked to list all affiliations or associations with clubs, organizations, churches, unions, businesses, et cetera, the applicant listed nothing. This is inconsistent with the current Form I-687, where the applicant listed the First United Methodist Church from April 1981 to December 1991. At part #35 of the 1990 Form I-687 where applicants were asked to list all absences from the United States since entry, the applicant listed two trips to the Philippines for vacations from February 1983 to March 29, 1983 and March 29, 1988 to April 27, 1988. This is inconsistent with the current Form I-687 where the applicant only listed a ten day trip to the Philippines for her brother’s surgery in 1983. At part #36 where applicants were asked to list employment in the United States since first entry, the applicant listed the following positions: Babysitter for [REDACTED] from December 1981 to November 1983; and babysitter for Mrs. [REDACTED] from January 1985 to August 1988. This information is inconsistent with the current Form I-687 where the applicant did not list any employment during the requisite period. The inconsistencies between the two Forms I-687 signed by the applicant cast serious doubt on the applicant’s claim to have resided in the United States during the requisite period.

In denying the application the director determined that the applicant had not established by a preponderance of the evidence that she meets the requirements for temporary resident status. The director noted that the applicant was admitted to the United States as a tourist on September 25, 1989. The director erroneously concluded that the applicant’s period of lawful status, which began in September 1989, interrupted her continuous residence in an unlawful status during the requisite period. The director’s error is harmless because the AAO conducts a *de novo* review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(d)(6). The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) (“On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”); *see also, Janka v. U.S. Dept. of*

Transp., NTSB, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

On appeal, counsel for the applicant explained that the CSS/Newman Settlement Agreements do not require that the applicant establish continuous unlawful residence past May 4, 1988.

In summary, the applicant has provided contemporaneous evidence of residence in the United States that is not geographically identifiable or is otherwise not relevant to the determination of whether the applicant resided in the United States during the requisite period; shows only that the applicant was present in the United States on four specific dates during 1981 and 1982; or reveals information that is ultimately inconsistent with the current Form I-687. The applicant provided multiple attestations that do not conform to regulatory standards, fail to state that the applicant resided in the United States at any other time than in 1981, are unsigned, fail to state that the applicant resided in the United States during the requisite period, lack sufficient detail, or contradict the applicant's claim to have entered the United States before January 1, 1982. The declaration from Reverend [REDACTED] does not conform to regulatory standards. The declaration from [REDACTED] and [REDACTED] fails to state that the applicant resided in the United States at any other time than in 1981. The form declarations from [REDACTED] and [REDACTED] are unsigned. The form declaration from [REDACTED] fails to state that the applicant resided in the United States during the requisite period. The declarations from [REDACTED] and [REDACTED] lack sufficient detail. The declaration from [REDACTED] contradicts the applicant's claim to have entered the United States before January 1, 1982.

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 contradictory statements on her applications and her reliance upon documents with minimal probative value, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States for the requisite period 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.