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U.S. Citizenship
and Immigration
Services

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FILE:

MSC-05-244-18761

Office: NEW YORK

Date: **APR 14 2008**

IN RE:

Applicant:

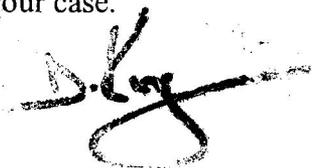
APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

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.


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. 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. The director denied the application, finding that 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.

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).

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)(1) 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 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 a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to Citizenship and Immigration Services (CIS) on June 1, 2005. The applicant signed this form under penalty of perjury, certifying that the information she provided is true and correct. 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 lived at [REDACTED], Queens, New York from 1980 until 1986. She also listed her address as [REDACTED], Brooklyn, New York from 1986 until 1989. On the Form I-687 Supplement, CSS/Newman Class Membership Worksheet, the applicant indicated that she entered the United States before January 1, 1982 but provided no evidence of such entry.

On March 11, 2006, the director issued a Notice of Intent to Deny (NOID) to the applicant, indicating that the applicant had not demonstrated eligibility for the benefit sought. The director indicated that CIS records reflect that the applicant filed two I-140 Immigrant Petitions for Alien Worker, which were denied on January 31, 2002 and November 8, 2000 respectively, along with the accompanying Form G-325A biographical information. A closer examination of the record reflects that the Faith Restoration Center, Inc. filed an I-140 Immigrant Petition on the applicant’s behalf, on April 17, 2001 which was subsequently denied on January 31, 2002. No biographical information was submitted with this application.

However, on February 22, 2000, the same organization, [REDACTED] c., filed an I-360 Petition for Amerasian, Widow(er) or Special Immigrant to classify the applicant as a religious worker under section 101(a)(27)(C) of the Immigration and Nationality Act. This petition was

denied on November 8, 2000. In conjunction with the I-360 filing, the applicant submitted a Form G-325A biographic information. In that document, the applicant listed her address from April 1949 until April 1989 as [REDACTED], St. Peters, Barbados. Thus, the applicant admitted in a previous application filed with CIS that she resided in Barbados for the duration of the requisite period.

Further, as the director stated, the applicant submitted copies of her Barbados passport, issued December 2, 1985 in Barbados. Contained in the passport is a B1/B2 nonimmigrant visa issued in Barbados on July 20, 1988. This evidence places the applicant in Barbados during the statutory period and conflicts with her I-687 application in which she listed her only trip abroad during the statutory period as “a few days” in December 1986. The applicant has not provided any explanation regarding the inconsistent information provided in her two applications and the inconsistencies cast doubt on the reliability and sufficiency of the evidence offered in support of her legalization application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92. Here, no explanation or evidence has been submitted which would lend credibility to the applicant’s claim that she was continuously residing in unlawful status in the United States for the duration of the statutory period.

In response to the director’s Notice of Intent to Deny the application, the applicant submitted one piece of evidence; a notarized letter from [REDACTED] of St. Barnabas Episcopal Church. [REDACTED] indicated that he is a lawful permanent resident of the United States residing at 485 [REDACTED] Brooklyn, New York. [REDACTED] indicated that he “is aware . . . by way of statements made by the applicant during our interaction . . . that from January 1, 1982 until May 4, 1988, [REDACTED] lived unlawfully in the country.” He did not indicate how frequently or under what circumstances he saw the applicant during the requisite period, nor did he provide any other details regarding the events and circumstances of the applicant’s residence in the United States that would tend to lend probative value to his statement. Moreover, he did not specifically state that he has direct, personal knowledge that the applicant continuously resided in the United States during the requisite period apart from the “statements made by the applicant during our [sic] interaction.”

This letter also does not conform to the statutory requirements for attestations by churches, unions, or other organizations, which is found at 8 C.F.R. § 245a.2 ((d)(3)(v)). That regulation requires such attestations to “show the inclusive dates of membership and state the address where the applicant resided during the membership period.” [REDACTED] does not provide dates of the applicant’s membership or any other information that is probative of the issue of her initial entrance to the United States prior to January 1981 or her continuous residence for the duration of the statutory period. Thus, it can be given no probative weight.

The applicant did not submit any additional evidence on appeal. 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 his burden of proof with a broad range of evidence pursuant to 8 C.F.R. § 245a.2(d)(3).

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 one letter with minimal probative value, and the inconsistencies in her applications, 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 she 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.