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U.S. Citizenship
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FILE: [REDACTED]
MSC-05-253-15037

Office: BOSTON

Date: APR 23 2008

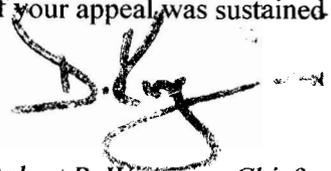
IN RE: Applicant: [REDACTED]

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: SELF-REPRESENTED

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, Boston. 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. The director indicated that the applicant stated in her interview with an immigration officer that she had never attended a school, been admitted to a hospital, or been arrested in the United States.

On appeal, the applicant stated that the immigration officer who conducted her interview never asked about her schooling, hospitalization, or arrests in the United States. The applicant stated that the director erroneously applied the clear and convincing evidentiary standard, rather than the preponderance of the evidence standard. The applicant indicated that the director erroneously evaluated whether the applicant had “entered and maintained unlawful residency in the United States from before January 1, 1982.” The applicant also stated that she was deprived of due process.

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 June 10, 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 listed the following Worcester, Massachusetts addresses during the requisite period: [REDACTED] from 1981 to 1986; and [REDACTED] from 1986 to 1991.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided one attestation that relates to the requisite period. The applicant provided an affidavit from [REDACTED] which states that the affiant met the applicant in

1981 at Easter services in Worcester, Massachusetts. The affiant stated that the applicant's family resided in the Worcester, Massachusetts area throughout the 1980s. The affiant failed to provide any contact information, including his address or telephone number. The affidavit was also not supported by any objective documentary evidence. As a result, this affidavit is found to be unverifiable. The applicant provided no other evidence that is relevant to her claim of continuous, unlawful residence in the United States throughout the requisite period.

In denying the application the director noted 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 erroneously stated that the applicant failed to establish entry and continuous unlawful residency in the United States from before January 1, 1982 instead of that the applicant had failed to establish continuous unlawful residency from before January 1, 1982 until the date that she attempted to file for temporary resident status. The director indicated that the applicant stated in her interview with an immigration officer that she had never attended a school, been admitted to a hospital, or been arrested in the United States. It is noted that the record of the applicant's interview with an immigration office on July 18, 2005 indicates that the officer asked if the applicant attended school, went to a hospital, or was arrested in the United States. The record indicates the applicant stated that she did not attend school and was home schooled instead, went to a hospital but does not recall the name, and was never arrested in the United States. The director erroneously stated that the applicant indicated that she was never admitted to a hospital rather than that she was admitted to a hospital but does not recall the name of the hospital.

The director's errors are found to be 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, the applicant stated that the immigration officer who conducted her interview never asked about her schooling, hospitalization, or arrests in the United States. As noted above, the director accurately referred to the applicant's statements regarding schooling and arrests. The director's error regarding whether the applicant indicated she was hospitalized has been found to be harmless. The applicant stated that the director erroneously applied the clear and convincing evidentiary standard, rather than the preponderance of the evidence standard. The director's decision accurately refers to the evidentiary standard as the preponderance of the evidence standard. The applicant also indicated that the director erroneously evaluated whether the applicant had "entered and maintained unlawful residency in the United States from before January 1, 1982." As stated above, the error in the director's statement is found to be harmless.

Lastly, the applicant stated that she was deprived of due process. This claim will be addressed below.

In summary, the applicant has not provided sufficient evidence of residence in the United States relating to the requisite period. She submitted a relevant attestation from only one person concerning that period. The affidavit from [REDACTED] does not include any contact information for the affiant and is not accompanied by any objective documentary evidence. Therefore, this affidavit is found to be unverifiable and is given very little weight.

The absence of sufficiently detailed and verifiable 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 a single document 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.

Although the applicant argued that her right to procedural due process was violated, she has not shown that any violation of the regulations resulted in "substantial prejudice" to her. *See De Zavala v. Ashcroft*, 385 F.3d 879, 883 (5th Cir. 2004) (holding that an applicant "must make an initial showing of substantial prejudice" to prevail on a due process challenge). The applicant has fallen far short of meeting this standard. A review of the record and the adverse decision indicates that the applicant was provided with an opportunity to present evidence in support of her claim, and the director properly applied the statute and regulations to the applicant's case. The applicant's primary complaint is that the director denied the petition. As previously discussed, the applicant has not met her burden of proof and the denial was the proper result under the regulation. Accordingly, the applicant's claim is without merit.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.