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FILE: [REDACTED]
MSC-05-272-12383

Office: NEW YORK

Date: **APR 30 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:

[REDACTED]

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 Benefits 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.

A handwritten signature in black ink, appearing to read "R. Wiemann", written over a circular stamp or mark.

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. Specifically, the director stated that though the applicant had submitted evidence, an affidavit, in support of her application, this affidavit did not carry sufficient weight to prove by a preponderance of the evidence that the applicant resided in the United States for the requisite periods. In saying this, the director noted that this affidavit was not amenable to verification, as it was not submitted with a current phone number at which the affiant could be reached. 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.

On appeal, the applicant asserts that the director did not give sufficient weight to the evidence she submitted in support of her application. She submits an additional affidavit in support of her application.

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) 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 his or 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 CIS on June 29, 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 showed her address in the United States during the requisite period to be: [REDACTED], in Brooklyn, New York from December 1981 until October 2000. At part #33, where the applicant was asked to list all of her employment in the United States since she first entered, she showed that during the requisite period, she was employed by various individuals in Brooklyn, New York as a private care giver from November 1986 until the date she submitted her Form I-687.

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. 8 C.F.R. § 245a.2(d)(5). To meet her burden of proof, an applicant must provide evidence of eligibility apart from her own testimony. 8 C.F.R. § 245a.2(d)(6). **The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that an applicant may submit to establish proof of continuous residence in the United States during the requisite period. This list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts or letters. An applicant may also submit any other relevant document pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).**

Here, the applicant initially did not submit evidence apart from her Form I-687 to prove that she resided in the United States during the requisite period. Therefore, on November 15, 2005, the director of the National Benefits Center issued a Notice of Intent to Deny (NOID) to the applicant. In his NOID, the director informed the applicant that she failed to provide evidence that she entered the United States before January 1, 1982 and then resided continuously and was physically present in the United States for the requisite periods. He also noted that she did not submit proof that she was admissible as an immigrant. The director of the National Benefits Center granted the applicant thirty (30) days within which to submit additional evidence in support of her application.

In response to the NOID issued by the director of the National Benefits Center, the applicant submitted one affidavit. Details of this affidavit are as follows:

- An affidavit from [REDACTED] that was notarized on December 13, 2005. In this affidavit, the affiant states that the applicant, his niece, resided in the United States since before January 1, 1982 and for the duration of the requisite period. He lists her address during the requisite period consistently with what the applicant showed it to be on her Form I-687. Though not required to do so, the affiant submits a photocopy of his passport, issued by Ghana and bearing the number [REDACTED] as proof of his identity. It is also noted that the affiant submitted pages six and seven of this passport showing a departure from Ghana on September 12, 1980 and an entry into the United States on September 13, 1980. On page seven of this passport "[REDACTED]" is also written. Though this affiant states that the applicant resided in the United States during the requisite period, he fails to indicate how he knows this. He fails to indicate how he knows the applicant entered the United States before January 1, 1982. He does not indicate the frequency with which he saw the applicant during the requisite period. Further, though he submits a photocopy of a passport showing that he entered the United States in 1980, he fails to submit proof that he resided in the United States for part or all of the requisite period. It is also noted that this affidavit was not submitted with a phone number at which the affiant could be contacted to verify information contained in the affidavit. Because of its significant lack of detail and because it is not

amenable to verification, this affidavit can only be afforded very minimal weight in proving that the applicant resided in the United States during the requisite period.

In a second NOID in the record, issued by the District Director of the New York Office on June 23, 2006, that director noted that because the only evidence the applicant submitted in support of her application, the affidavit from [REDACTED] was not amenable to verification, it did not carry sufficient weight to prove that the applicant entered the United States before January 1, 1982 and then resided continuously in the United States for the duration of the requisite period. This director granted the applicant thirty (30) days within which to submit additional evidence for consideration in support of her application.

Because the applicant failed to submit additional evidence in support of her application in response to the New York District Office director's NOID, the director found she had not overcome the reasons for denial as detailed in her NOID. Therefore, the director denied her application on August 7, 2006.

On appeal, the applicant asserts that the director did not accord sufficient weight to the evidence submitted by the applicant in support of her application. She submits an additional affidavit in support of her application. Details of this affidavit are as follows:

A notarized affidavit from Slim Serebuor dated July 5, 2006. In this affidavit, the affiant states that the applicant is a family member and a friend. The affiant states that he was born in Ghana but currently resides in the United States. The affiant provides the applicant's address in the United States consistently with what the applicant provided on her Form I-687. Though not required to do so, he provides a photocopy of his naturalization certificate which shows he became a United States Citizen in 1994 as proof of his identity. However, the affiant fails to provide a telephone number at which he can be contacted to verify information in the affidavit. Though the affiant states that he knows that the applicant resided in the United States during the requisite period, he does not state how he knows this. He does not submit proof that he himself resided in the United States during the requisite period. He fails to indicate whether there were periods of time during the requisite period when he did not see the applicant. Because of its significant lack of detail, and because it is not amenable to verification this affidavit can only be afforded very minimal weight in establishing that the applicant resided in the United States during the requisite period.

For the reasons noted above, the AAO finds that the director correctly found that the evidence previously submitted by the applicant in support of her claim of having entered the United States before January 1, 1982 and then residing continuously in the United States for the requisite periods did not carry sufficient weight to allow the applicant to prove by a preponderance of the evidence that she did so. Similarly, the affidavit from [REDACTED] submitted with the applicant's appeal, when considered with previously submitted evidence does not allow the applicant to meet her burden of proof.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence during the requisite periods 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 that the one document submitted by the applicant is significantly lacking in detail and is not amenable to verification, it is concluded that she has failed to establish by a preponderance of the evidence that she 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.