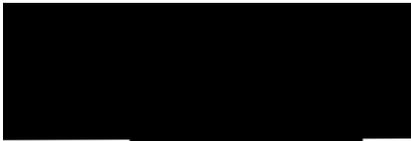


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FILE: [REDACTED]  
MSC-04-356-11471

Office: BOSTON, MA

Date:

**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: 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 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".

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. Specifically, the director stated in his decision that the applicant did not submit evidence that carried sufficient weight to establish by a preponderance of the evidence that she entered the United States on a date prior to January 1, 1982 and then maintained continuous residence in the United States for the duration of the requisite periods. 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, dated April 10, 2006, the applicant asserts that she has not received a notice to appear for an interview since she was interviewed on September 11, 1991. It is noted that the applicant's Form I-687 bears a stamp that shows the applicant was interviewed by the Citizenship and Immigration Services, or the Service, on January 5, 2006 by an officer [REDACTED]. It is further noted that the record contains both a photocopy of identity documents submitted by the interpreter used during this interview and notes taken by an officer during an interview on that date. It is also noted that the record shows that after the applicant submitted her appeal, the director granted her second interview date on July 19, 2006. The record contains a record that indicates that the applicant was mailed a Form G-56 informing her of this interview appointment date. This notice was sent to her address of record. The record indicates that the applicant did not appear for this scheduled interview. The applicant further submits three affidavits 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 September 20, 2004. 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 addresses in the United States during the requisite period to be: 90-12 84<sup>th</sup> Street in Woodhaven, New York from September 1981 until January 1983; [REDACTED] in Jamaica, New York from February 1983 until November 1986 and then [REDACTED] in Brooklyn, New York from December 1986 until February 1989. At part #33, where the applicant was asked to list all of her employment in the United States since she first entered, she showed her employment during the requisite period to be: a housekeeper and babysitter for [REDACTED] in College Point, New York from December 1981 until August 1985; and as a housekeeper and babysitter for [REDACTED] in Whitestone, New York from September 1985 until July 1989.

The record also contains an unsigned affidavit from the applicant dated September 6, 2004. In this affidavit, the applicant states that she was turned away by a Qualified Designated Entity (QDE) on January 15, 1988 and that she was denied her interview by the Service on September 11, 1991 because her attorney did not appear with her at the time of her interview. She asserts that she never received a new interview time after that date.

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).

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted letters from organizations, affidavits and documents both from the Service and from a Qualified Designated Entity.

The regulation at 8 C.F.R. § 245a.2(d)(3)(v) states in pertinent part that attestations by organizations can be considered credible proof of residence if such documents: identify the applicant by name; are signed by an official whose title is shown; show inclusive dates of membership; state the address where the applicant resided during his or her membership period; include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationary; establish how the author knows the applicant; and establish the origin of the information being attested to.

The applicant has submitted two (2) letters from organizations as follows:

- A letter from the Tsung Sun Social Club dated December 30, 2005 that is notarized. This letter states that the applicant joined the organization in November 1981 and has been a member since then. The letter states that the applicant has participated in social activities since that time. The letter goes on to say that the longest period of time that the club has not seen the applicant was for sixteen (16) weeks. This letter does not indicate whether records were consulted to determine the applicant's status as a club member since November 1981. The letter indicates that the applicant was not seen for sixteen (16) weeks, but does not show dates associated with this absence. The letter further fails to indicate the address where the applicant resided during her membership period. Because this letter is significantly lacking in detail, it alone cannot be accorded sufficient weight to establish, by a preponderance of the evidence that the applicant resided continuously in the United States for the duration of the requisite period.
- A letter from the Oriental Cultural Association that is dated December 30, 2005 and was notarized on January 3, 2006. This letter asserts that the applicant has been a member of that organization since May 1982. Though this letter asserts that the organization knows that the applicant has resided in the United States since before January 1, 1982, it does not indicate how the organization knows

this, since the applicant did not join the Association until May of 1982. Further, this letter fails to indicate whether official records were consulted to determine the date the applicant became a member. This letter further fails to show the applicant's address of residence in the United States while she was a member or to state the frequency with which the applicant attended meetings during the requisite period. Therefore, this letter can only be accorded very minimal weight in establishing that the applicant resided in the United States during the requisite period.

The applicant submitted ten (10) notarized affidavits in support of her application. Details are as follows:

- Notarized affidavits dated September 10, 2004, September 11, 2005, and January 3, 2006 from [REDACTED] and [REDACTED]. These affidavits all show that the affiants know that the applicant resided continuously in the United States since before January 1, 1982 and then for the duration of the requisite period. They go on to say that the affiants know that the applicant was turned away by a QDE during the original filing period. Here, all of the affiants fail to indicate where they met the applicant or to state whether they first met the applicant in the United States. Although not required to do so, all fail to provide identity documents or to provide proof that any of the affiants resided in the United States during the requisite period. Because these affidavits are significantly lacking in detail, none carries sufficient weight to establish that the applicant resided continuously in the United States in an unlawful status for the duration of the requisite period.

The applicant further submitted the following two (2) documents from a Qualified Designated Entity (QDE) and from the Service:

- A letter from a Polonia Organizations League, Inc. that shows that this organization was a QDE. This letter is dated January 15, 1988 and shows that the applicant was ineligible to obtain Temporary Resident Status because she had traveled outside of the United States and then returned improperly. Though this letter shows that the applicant was turned away by a QDE, it does not establish that the applicant entered the United States on a date before January 1, 1982, nor does it prove that she resided continuously in the United States for the duration of the requisite period.
- A photocopy of an official letter from Immigration and Naturalization Services, now Citizenship and Immigration Services or the Service, dated May 2, 1991. This letter indicates that the applicant had an interview appointment date to determine class membership on September 11, 1991. Though this letter shows that the applicant was granted an appointment for an interview in 1991, it does not establish that the applicant entered the United States before January 1, 1982 and then maintained continuous residence in the United States since that time and for the duration of the requisite period.

The director denied the application for temporary residence on March 14, 2006. In denying the application, the director stated that the applicant failed to meet her burden of proving by a preponderance of the evidence that she entered the United States before January 1, 1982 and then maintained continuous residence for the duration of the requisite period.

On appeal, the applicant asserts that she was turned away by a QDE on January 15, 1988, and then was turned away by the Service on September 11, 1991 when she appeared for her interview. She asserts that since that date she has not been scheduled for an interview. However, as was previously noted, the applicant

dated her appeal on April 10, 2006 and the record shows that the applicant was interviewed pursuant to her Form I-687 Application for Temporary Residence on January 5, 2006. The record further indicates that the director of the Service's Boston Office afforded an opportunity for the applicant to appear for a second interview on July 19, 2006 after she filed her appeal. However, the applicant did not appear for this interview.

The applicant also submitted three (3) additional affidavits in support of her application. All of these affidavits, from [REDACTED] and [REDACTED] are notarized and dated April 10, 2006. In these affidavits, all three affiants state that they know that the applicant resided continuously in the United States since before January 1, 1982 and then for the duration of the requisite period. They go on to say that they know that the applicant was turned away by a QDE during the original filing period. Here, all of the affiants fail to indicate where they met the applicant or to state whether they first met the applicant in the United States. All fail to provide identity documents or to provide proof that any of the affiants resided in the United States during the requisite period. Because these affidavits are significantly lacking in detail, they do not carry sufficient weight to establish that the applicant resided continuously in the United States for the duration of the requisite period.

In summary, the applicant has not provided any evidence of her entry to the United States before January 1, 1982 except for statements from affiants that are significantly lacking in detail regarding when and where those affiants met the applicant. The affiants fail to indicate that they themselves resided in the United States either since prior to January 1, 1982 or during the requisite period in general. The statements and affidavits lack credibility and probative value for the reasons noted.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, as well as the inconsistencies and contradictions regarding the applicant's opportunities to appear for an interview before the Service seriously detract 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 inconsistencies in the record and the lack of credible supporting documentation, it is concluded that she 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