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U.S. Citizenship
and Immigration
Services

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FILE: MSC-05-179-12227

Office: NEW YORK

Date: **AUG 04 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:



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.

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 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.

On appeal, counsel asserts that the applicant submitted evidence that corroborates her residence in the United States during the requisite period.

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 on March 28, 2005. At part #30 of the Form I-687 application where applicants are asked to list all residences in the United States since first entry, the applicant showed her first address in the United States to be in Brooklyn, New York from 1996 until Present. The applicant failed to list any residences during the requisite period. At part #33, she showed her first employment to be as a self-employed hair braider. The applicant indicated that she has been employed in this position since 1985. This part of the application requests applicants to show their employment location and hourly or annual wage. However, the applicant neglected to provide such information. The applicant’s failure to complete her application diminishes her credibility as well as the credibility of her claim of continuous residence in the United States during the requisite period.

The applicant submitted as corroborating documentation a notarized letter from [REDACTED] dated December 9, 2005. The letter, in pertinent part, provides:

This letter is to affirm that [REDACTED] had served as a childcare provider/nanny for [REDACTED] from September 1982

through July 1985, these duties included transporting the child to school and afterschool activities and supervising homework performance and meal preparation, These duties were served at the residence of [REDACTED]

Presumably, the author of this letter, [REDACTED] has written a letter about the applicant's care for him when he was a child. However, he neglects to indicate the source of his recollection of the events he has attested to. He has not provided his age during the time period at issue in this letter. Furthermore, [REDACTED] assertion that the applicant was his nanny from September 1982 until July 1985 is inconsistent with the applicant's Form I-687. At part #33 of this application, the applicant showed that she was first employed as a hair braider. Given the lack of detail and inconsistency, this letter is without any probative value as evidence of the applicant's residence in the United States during the requisite period.

On June 29, 2007, the director issued a notice of decision to deny the application. In denying the application, the director noted that the applicant received a Notice of Intent to Deny (NOID) requesting additional evidence of her eligibility for temporary resident status. The director stated that in response to the NOID, the applicant requested additional time to gather new information regarding her arrival in the United States. The director noted that at the time of the applicant's interview, she did not submit new evidence. The director found that during the applicant's interview she testified that she first entered the United States in November 1982. The director determined that the applicant therefore did not reside in the United States prior to January 1, 1982. The director concluded that the applicant failed to meet her burden of proof in the proceeding.

On appeal, counsel asserts that contrary to the director's denial notice, the applicant gave several affidavits and letters to support her claim. Counsel states that the director's decision is erroneous and ignores the evidence the applicant submitted in support of her case. Counsel asserts that the applicant submitted evidence that corroborates her residence in the United States during the requisite period.

Counsel furnished as corroborating evidence the previously submitted notarized letter from [REDACTED] and notarized letters from [REDACTED] and [REDACTED]. Counsel asserts that the applicant submitted sufficient evidence of her residence in the United States during the requisite period. However, these documents are without any probative value as corroborating evidence. As discussed, the letter from [REDACTED] lacks considerable detail and is inconsistent with the applicant's Form I-687. In addition, the letters from [REDACTED] and [REDACTED] are not relevant because they do not relate to the requisite period. The letter from [REDACTED] dated May 15, 2006, states, in pertinent part, "[d]uring the summer 1992 soon after we met we started dating which lasted four years." Similarly, the letter from [REDACTED] dated December 20, 2005, states, in pertinent part, "I have known [REDACTED] for about 10 years." It should also be noted that the letter from [REDACTED] provides that the applicant resided in Indiana for "a number of years."

However, the applicant has not listed a residence in Indiana on her Form I-687. Although this inconsistency is outside the requisite period, it nevertheless diminishes the applicant's credibility. The applicant's failure to provide credible and probative evidence to establish her continuous residence in the United States during the requisite period renders a finding that she has failed to satisfy her burden of proof, as delineated in 8 C.F.R. § 245a.2(d)(5).

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 noted in the record, 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 he 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.