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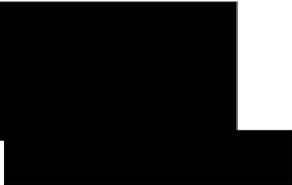


U.S. Citizenship
and Immigration
Services

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FILE:



Office: PHILADELPHIA

Date: **AUG 04 2008**

MSC 06 054 13519

IN RE:

Applicant:



APPLICATION:

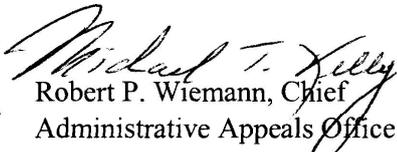
Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. 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.

for 
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, Philadelphia, Pennsylvania. 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, on November 23, 2005. The director issued a Notice of Intent to Deny (NOID) the application on December 16, 2005. Upon review of the record, the director denied the application on November 9, 2006. On appeal, the applicant submits a brief.

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 applicant attempted to file the application. 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 or attempting to file the application. 8 C.F.R. § 245a.2(b)(1).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "until the date of filing" shall mean 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 periods, 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.* 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. *See* 8 C.F.R. § 245a.2(d)(6).

Even if the director has some doubt as to the truth, if the applicant 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 (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.

The issue in this proceeding is whether the applicant has furnished sufficient evidence to establish her entry into the United States prior to January 1, 1982 and continuous unlawful residence since such date through the date she attempted to file the application.

On the Form I-687, the applicant indicated she had last entered the United States on or about November 1988. The applicant listed her address for the pertinent time period as: [REDACTED] NY from September 1981 to June 1988. The applicant listed employment at: [REDACTED] Skin Care as beauty help/shampoo from June 1983 to December 1983; [REDACTED] as a salesperson from February 1984 to December 1985; and [REDACTED] Beauty Salon as help from January 1986 to March 1988. The applicant listed her absences from the United States during the pertinent time period as February to March 1985, April to May 1988, and in November 1988. The applicant indicated that she belonged to the United American Muslim Association of New York from December 1981 to June 1988. The applicant's date of birth is listed on the Form I-687 as November 5, 1971; thus the applicant would have been about ten years old in January 1982.

The record also contains the following information submitted to establish the applicant's continuous residence in the United States for the applicable time period:

- A photocopy of a January 28, 1982 letter written to [REDACTED] and the applicant regarding a disputed hotel bill for a January 14, 1982 stay at the Time Square Motor Hotel.
- A photocopy of a March 17, 1982 letter issued to [REDACTED] regarding an application for telephone service in New York.
- A photocopy of a wedding invitation issued to the applicant on July 7, 1983 in New York.
- A photocopy of an invitation issued to the applicant to attend a program celebrating [REDACTED] birthday in New York on December 6, 1983.
- A December 15, 1983 letter written by the owner of [REDACTED] Care Salon who certifies that the applicant had worked in the salon from June 1983 to December 1983. A lease agreement showing [REDACTED] as the tenant of premises at [REDACTED] dated October 6, 1984.

- A photocopy of a certificate dated December 28, 1985 that was issued to the applicant, date of birth November 5, 1971, for attending a Muslim Religious Course from September 1981 to December 1985.
- A photocopy of a December 20, 1985 letter written by the owner of Purity Millers, Inc. to the U.S. Department of Justice, referencing the applicant's employment as a salesperson with the company from February 1984 to December 1985.
- A photocopy of an April 8, 1988 letter written by [REDACTED] advising the U.S. Department of Justice that the applicant had been a patient from February 20, 1985 to the present and that he had been informed that the applicant had come to the United States sometime in 1981.
- An undated, handwritten letter written to [REDACTED] from Talbot Perkins Children's Services that referenced the applicant and rescheduled an appointment in February 1987.
- A March 20, 1988 letter written by a beauty specialist at Bobbi Pin Hair Salon who certifies that the applicant worked for the beauty salon from January 1986 to March 1988 and during the course of employment, the applicant traveled to her native country because of a family emergency.

On appeal, the applicant asserts that she entered the United States along with [REDACTED] before December 1981 by crossing the Canadian/U.S. border without inspection. The applicant contends that the documents submitted in response to the director's NOID are of considerable weight if viewed sympathetically.

The AAO has reviewed the record in this matter and finds that the applicant has not established her continuous unlawful residence in the United States for the applicable time period. The record contains photocopies of documents, some of which contain dates that are in a different font than the font in the body of the letter. The photocopies of the documents, rather than originals, along with the applicant's age at the time of entry and the content of the documents cast doubt upon her claim. For example, the applicant states that she worked part-time for six months in 1983, when she would have been 11 to 12 years old. The letter submitted by the owner of [REDACTED] Skin Care Salon certifying this employment does not comply with the requirements of 8 C.F.R. § 245a.2(d)(3)(i), which indicates that letters from employers should include statements that the information was taken from company records, identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable. Likewise, the photocopy of the Purity Millers, Inc. letter does not comply with the requirements at 8 C.F.R. § 245a.2(d)(3)(i) and further, it is unclear why this employer would write to the U.S. Justice Department in 1985 to inform the U.S. Justice Department of its employment of a 13 or 14-year girl. Similarly, the letter written March 20, 1988 regarding the applicant's employment at Bobbi Pin Hair Salon from January 1986 to March 1988 written to the U.S. Justice Department does not comply with the requirements at 8 C.F.R. § 245a.2(d)(3)(i) and further does not indicate why the employer is writing to the U.S. Justice Department regarding the applicant's employment. The AAO does not find the employment letters probative.

The AAO has also reviewed the photocopy of a wedding invitation for a wedding in July 1983 and the invitation to attend a program celebrating [REDACTED] birthday in December 1983 issued to the applicant. Neither of these invitations provides probative evidence as they cover independent one-time events and do not include the totality of the requisite time period. In addition, without the original document, it is not possible to determine whether the documents are legitimate. Similarly, the lack of the original certificate issued to the applicant for attending a religious course precludes Citizenship and Immigration Services (CIS) from examining and determining the veracity of that document.

The AAO has also reviewed the January 28, 1982 letter issued to the applicant and [REDACTED] the applicant's father, disputing a hotel bill. This letter does not establish the applicant's entry into the United States, prior to January 1, 1982 nor does the letter establish the applicant's continuous residence in the United States. Likewise, the letter written to the applicant's father regarding the application for telephone service in March 1982 and the lease agreement entered into in October 6, 1984 do not establish the applicant's entry into the United States prior to January 1, 1982 and continuing residence for the duration of the requisite period. Similarly, the undated handwritten letter from Talbot Perkins Children's Services written to the applicant's father, although it references the applicant, does not contain evidence of the applicant's entry into the United States and continuous residence for the applicable time period. The applicant has not offered any information or documentation regarding the events and circumstances of her entry into the United States and her family and school situation during the requisite time period.

The AAO has further reviewed the letter written by [REDACTED] indicating that the applicant had been his patient since February 1985. [REDACTED] does not provide his office's records substantiating this information. In addition, [REDACTED] reference that he was informed that the applicant entered the United States in 1981 is insufficient, as this acknowledgement indicates that [REDACTED] did not have personal knowledge of the applicant's entry into and continuous residence in the United States from prior to January 1, 1982 to February 1985.

Upon review of the entire record in this matter, the AAO finds the documentation submitted lacks sufficient probative value in establishing the applicant's entry into the United States prior to January 1, 1982 and continuous unlawful residence in the United States for the requisite time period. The deficient documentation and the applicant's general statement comprise the only evidence of the applicant's residence in the United States from prior to January 1, 1982 through the requisite time period. This information lacks credibility and probative value for the reasons noted. The absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period 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. The applicant has failed to meet her burden of proof and 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. The appeal will be dismissed.

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