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U.S. Citizenship
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Services

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[REDACTED]

FILE: [REDACTED]
MSC-05-322-10286

Office: NEW YORK

Date: **AUG 18 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.

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. 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 authors of her affidavits were present in the United States during the requisite period. The applicant states that the affiants are willing to testify under oath regarding her presence in the United States during the statutory 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 August 18, 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 that during the requisite period she resided at Woodside, New York, from November 1981 until May 1985 and Jackson Heights, New York, from May 1985 until November 1990. At part #33, where applicants are asked to show their employment in the United States since entry, the applicant showed that from January 1982 until November 1990 she was self-employed. The applicant neglected to provide her employment location or occupation during this period. The applicant’s failure to provide this information draws into question her claim of continuous residence in the United States during the requisite period.

The applicant submitted the following documentation:

- A notarized letter from [REDACTED] dated August 4, 2005, which provides, “I and my family, all citizen of this country, know [REDACTED] since 1982.

We met her in a Christmas reunion back in 1982. Since then we can say she is a very honest, responsible and respectful lady.” This letter neglects to provide the location of where Ms. [REDACTED] first met the applicant. There is no indication that they first became acquainted in the United States. Furthermore, the letter does not detail Ms. [REDACTED] relationship with the applicant in the United States during the requisite period. Given these deficiencies, this letter is without any probative value as evidence of the applicant’s continuous residence in the United States during the requisite period.

- A notarized letter from [REDACTED] dated August 5, 2005, which provides, “I [REDACTED], citizen of the United States, over age, through this form I know [REDACTED], whom is a very human person, works, and is honest. Since the year of 1.984 [sic] she has always attended my salon and we have lived near.” This letter neglects to provide the address of [REDACTED]’s salon. There is no indication that his salon is located in the United States. The letter states that [REDACTED] lived near the applicant. However, it does not provide his address or the dates that they resided near each other. Given these deficiencies, this letter is without any probative value as evidence of the applicant’s continuous residence in the United States during the requisite period

On February 28, 2006, the director issued a Notice of Intent to Deny (NOID) to the applicant. The director determined that the applicant failed to show evidence of her entry into the United States in November 1981. The director noted that CIS records do not indicate that she entered the United States on this date. The director determined that the affidavits the applicant submitted are neither credible nor amenable to verification. The director stated that there is no proof that the affiants have direct personal knowledge of the events and circumstances related to the applicant’s residency and that they were residing in the United States during the requisite period. The director concluded that the applicant failed to submit credible documentation that would constitute by a preponderance of the evidence her residence in the United States during the requisite period. The applicant was afforded a period of 30 days to submit additional documentation in rebuttal to the NOID.

In rebuttal to the NOID, the applicant submitted the following documentation:

- A notarized letter from [REDACTED] dated March 21, 2006, which provides, “[t]his is to verify that I have known [REDACTED] since the year 1982. She is woman with high moral values, a good heart, honest and always willing to help others. Individuals like Ms. [REDACTED] make a difference in our community.” This letter neglects to provide the location of where [REDACTED] first met the applicant. There is no indication that they first became acquainted in the United States. Furthermore, the letter does not detail [REDACTED]’s relationship with the applicant in the United States during the requisite period. Given these deficiencies, this letter is without any probative value as evidence of the applicant’s continuous residence in the United States during the requisite period.

- An affidavit from _____ dated March 17, 2006, which provides, "I know Mrs. _____ since 1981. We met each other at the train station during the time while we both have the same schedule to go to work. Since that time we have maintain a good friendship, we have spent many important occasions together such as Birthdays, Christmas, and during the summer we go to the beach and enjoy time together without our families. . . ." This affidavit fails to provide the specific location of where _____ first met the applicant. There is no indication that they first became acquainted and maintained a friendship in the United States. The affidavit states that _____ met the applicant at a train station because they had the same work schedule. However, the applicant neglected to show her occupation or location of employment on her Form I-687. Given these deficiencies, this affidavit is without any probative value as evidence of the applicant's continuous residence in the United States during the requisite period.
- A letter from _____ Parochial Vicar, St. Sebastian Church, dated March 22, 2006. This letter states, _____ of _____ Woodside, NY 11377, has been a parishioner of St. Sebastian Church since 1981. Ms. _____ has participated in various programs of the church, and is a sincere and dedicated individual." The regulation at 8 C.F.R. § 245a.2(d)(3)(v) provides that attestations from churches should establish how the author knows the applicant and the origin of the information being attested to. This letter fails to follow these delineated guidelines. There is no indication in the letter that _____ has personal knowledge of the applicant's involvement with his church since 1981. At part #31 of the Form I-687, applicants are asked to show their affiliations with any churches or other organizations. The applicant failed to indicate on this part of the application that she is a member of the St. Sebastian Church. Therefore, this letter is without any probative value as evidence of the applicant's residence in the United States during the requisite period.
- Five original photographs featuring an unidentified woman. There is no indication that the person featured in the photos is the applicant. In addition, the photos fail to describe the location of where they were taken or the date that they were taken. There is no indication that the photos were taken in the United States during the requisite period. Given these deficiencies, these photos are without any probative value as evidence of the applicant's residence in the United States during the requisite period.

On June 23, 2006, the director issued a notice to deny the application. In denying the application, the director found that the affidavits from _____ and _____ appear to be neither credible nor amenable to verification. The director noted that there is no proof that the affiants have direct personal knowledge of the events and circumstances of the applicant's residency and that they were in the United States during the requisite period. The director stated that CIS contacted the Church of St. Sebastian and learned that there is no record that the applicant registered with the church. Lastly, the director found that the date and place the photographs were taken could not be verified. The director noted that one of the photos featured a poster from the Lion King film, which was released in 1994. The director concluded that the

applicant failed to submit credible documents that constitute by a preponderance of the evidence her residence in the United States during the requisite period.

On appeal, the applicant asserts that the authors of her affidavits were present in the United States during the requisite period. The applicant states that the affiants are willing to testify under oath regarding her presence in the United States during the statutory period. The applicant submits the addresses and phone numbers of [REDACTED] and [REDACTED]. The applicant furnishes as evidence of Ms. [REDACTED]'s identity and presence in the United States: a copy of the biographical page of Ms. [REDACTED] United States passport; a New York birth certificate for Ms. [REDACTED] child, dated February 9, 1984; and Ms. [REDACTED] New York marriage certificate, dated November 27, 1987. The applicant furnishes as evidence of Mr. [REDACTED]'s identity and residence: a copy of Mr. [REDACTED]'s United States passport; and a certificate, dated December 14, 1983, showing Mr. [REDACTED]'s completion of a hairdressing and cosmetology course at the Ultissima Beauty Institute in New York.

Although the applicant provided documents verifying [REDACTED] and [REDACTED]'s identity and presence in the United States, she has not overcome the grounds for denial. In denying the application, the director stated that there is no proof that the affiants have direct personal knowledge of the events and circumstances of the applicant's residency. However, on appeal the applicant resubmitted the same letters from [REDACTED] and [REDACTED]. The sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6). Pursuant to *Matter of E-M-*, supra, when viewed individually or within the totality of the evidence, the applicant has not submitted any probative evidence to establish that her claim is probably true. The applicant's failure to provide 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 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 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.