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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] MSC-05-190-11102

Office: NEWARK

Date: **AUG 28 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, Newark. 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, in his Notice of Intent to Deny (NOID), the director stated that though the applicant stated that she was only absent from the United States once during the requisite period, Citizenship and Immigration Services (CIS) records indicated that the applicant had additional absences in 1983 and 1984. The director stated that these discrepancies and the lack of credible documentation in the record caused her to fail to meet her burden of proof. The director granted the applicant 30 days within which to submit additional evidence in support of her application. The record reflects that the applicant failed to submit a rebuttal or additional evidence for consideration in response to the NOID. Therefore, she did not overcome the reasons for denial as stated in the NOID.

On appeal, the applicant submits a brief through counsel. Counsel asserts that the applicant frequently visited an individual who resided near the Canadian border and frequently crossed that border in his boat. Counsel states that the applicant's absences in 1983 and 1984 were caused when the applicant and this individual traveled by boat across the Canadian border for very short periods of time. Counsel asserts that often the applicant and her friend were "waived in" by the border patrol when they traveled to and from the Canadian border in the 1980's.

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 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 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 a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on April 8, 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 stated her addresses in the United States during the requisite period were all in New Jersey as follows: [REDACTED] from November 1981 to December 1982; [REDACTED] Jersey City from January 1983 until December 1985; [REDACTED] in Jersey City from January 1986 until December 1987; and [REDACTED] North Bergen from January 1988 until April 1994. At part # 32, where the applicant was asked to list all of her absences from the United States, she indicated she was absent once during the requisite period, when she traveled to Trinidad to see her ill father from July to August in 1987. At part #33, where the applicant was asked to list all of her employment in the United States since she first entered, she stated that she was employed: as a cleaner at Continental Restaurant in West End, New Jersey from October 1981 to December 1982; as a kitchen helper by [REDACTED] in East Rutherford, New Jersey from January 1983 until

December 1985; as a cashier by Family Food Center in New York, New York from January 1986 to December 1986; and as a kitchen helper by [REDACTED], New Jersey from January 1987 to June 1988.

The record also contains notes from the applicant's interview with a CIS officer. The applicant indicated she first entered the United States by traveling over the Canadian border by car into Detroit in October 1981.

Also in the record is a Form I-687 submitted in 1990 to establish class membership. The applicant stated her residences and employment in the United States and her absence from the United States during the requisite period consistently with what she indicated on her subsequently filed Form I-687. The applicant also submitted a Form for Determination of Class Membership with this Form I-687 on which she stated that she first entered the United States without inspection in October 1981.

Further in the record are CIS records of the applicant's entries into and exits from the United States. These records show the applicant had the following entries and exits:

- A departure from the United States on September 5, 1983
- An entry into the United States through the port of entry at Lewiston, New York on September 18, 1983, admission number [REDACTED]
- An entry into the United States through the port of entry at Lewiston, New York on December 9, 1983, admission number [REDACTED]
- A departure from the United States on December 18, 1983
- An entry into the United States through the port of entry at Lewiston, New York on August 4, 1984, admission [REDACTED]
- A departure from the United States on December 23, 1984
- An entry into the United States in New York City with a B2 visa on May 24, 1985. The I-94 Arrival Record that corresponds with this entry is [REDACTED]

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. 8 C.F.R. § 245a.2(d)(5). To meet his burden of proof, an applicant must provide evidence of eligibility apart from his or 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).

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states, in pertinent part: that letters from employers should be on the employer letterhead stationary, if the employer has such stationary and must include the following: an applicant's address at the time of employment; the exact period of employment; periods of layoff; duties with the company; whether or not the information was taken from the official company records; and where records are located and whether the Service may have access to the records. The regulation further provides that if such records are unavailable, an affidavit form-letter stating that the alien's employment records are unavailable and noting why such records are unavailable may be accepted in lieu of statements regarding whether the information was taken from the official company records and an explanation of where the records are located and whether USCIS may have access to those records. This affidavit form-letter shall be signed, attested to by the employer under penalty of perjury, and shall state the employer's willingness to come forward and give testimony if requested.

The applicant submitted the following evidence that is relevant to her residence in the United States during the requisite period:

- A letter from [REDACTED] that is dated May 29, 2002. The declarant states that he has known the applicant for more than 20 years. He states that he first met the applicant in Trinidad and that he has also known her in the United States. Though the declarant states that he believes the applicant has good moral character, he does not indicate the frequency with which he saw the applicant during the requisite period or whether there were periods of time during that period when he did not see the applicant. He further fails to state when he first saw the applicant in the United States.
- A certificate that indicates that the applicant completed a course in facial and makeup techniques at the Marvel School of Skin-Care and Cosmetics on October 25, 1984. However, this certificate does not indicate where this coursework occurred or where Marvel School of Skin-Care and Cosmetics is located or whether it is located in the United States.
- A certificate issued to the applicant by Marvel Beauty School stating that the applicant completed a course in hand and nail care on September 30, 1984. However, this certificate does not indicate where this coursework occurred or where Marvel Beauty School is located or whether it is located in the United States.

A photocopy of a letter from M & T Bank that was signed by [REDACTED] who indicates she is a QuickLink Representative. This letter is dated June 30, 1987 and is addressed to the applicant at [REDACTED]. It is noted that the applicant indicated that she resided at [REDACTED], New Jersey from January 1986 until December 1987.

- A photocopy of an Interim Driver's License for New York State that was issued to the applicant on February 1, 1988. This Interim Driver's License indicates that applicant's address of residence to be [REDACTED], New York. It is noted that

the applicant indicated that she resided in North Bergen, New Jersey from January 1988 until April 1994 on her Form I-687.

- An affidavit from [REDACTED] that is dated February 6, 2005. The affiant states that he has known the applicant since February 1981 when he met her while visiting Trinidad during Mardi Gras. He states that the applicant came to the United States in June 1981 and they visited together during the summer in upstate New York. Though the affiant speaks of the applicant's moral character, he does not state the frequency with which he saw her during the requisite period. He does not state whether there were periods of time during the requisite period when he did not see the applicant. Further, the applicant has maintained that she first entered the United States in October 1981 and this affiant states that she entered the United States in June 1981 and then spent the summer with the affiant. This casts doubt on the affiant's claim regarding when he first saw the applicant in the United States.
- A letter from [REDACTED] Travel in Passaic, New Jersey that is not dated or signed. This letter states that the applicant traveled from New York to Trinidad on July 8, 1987.
- A letter from [REDACTED] Chiropractic Office that is dated September 6, 1990. This letter states that the applicant was a patient at the doctor's office from April 1983 to June 1984.
- A letter from [REDACTED] who indicates that he is the vice president of **Ensign Bank**. This letter is dated October 12, 1982 and is addressed to the applicant at [REDACTED] New Jersey. In this letter, [REDACTED] states that he is enclosing a check for services preformed at CKN Properties in Fort Lee, New Jersey. It is noted that the applicant indicated that she was employed as a cleaner at Continental Restaurant in 1982 on her Forms I-687 and did not indicate that she had other employment in 1982 or prior to that time.
- An employment verification letter from Family Food Center that is dated July 10, 1987. Though this letter is signed, the name of the individual who signed the letter, who did not indicate his or her position at the Family Food Center, is not legible. The letter states that the applicant worked for Family Food Center from January 1986 until December 1986.
- An affidavit from [REDACTED] that is dated March 15, 1986. The affiant indicates that he is the **superintendent of the building** located at [REDACTED] Jersey. The affiant states that the applicant resided at his building from January 1983 until December 1985.
- An affidavit from [REDACTED] that is dated August 5, 1990. The affiant states that he is the superintendent of [REDACTED] in Jersey City. The affiant states that the applicant resided in apartment 306 in his building on Hudson Boulevard from January 1986 until December 1987. It is noted that the applicant indicated that she resided at [REDACTED] on those dates on both of her Forms I-687.

- An employment affidavit from [REDACTED] who indicates that he has known the applicant since 1982. Though the affiant speaks of the applicant's moral character, he does not state whether he knows if the applicant resided in the United States for part or all of the requisite period. Therefore, this affidavit carries no weight as evidence that she did so.
- An employment letter from "Caffe Roma" that is signed by [REDACTED] who does not indicate what his position with the café is. This letter is dated March 15, 1986. [REDACTED] states that the applicant worked for the café from January 1983 until December 1985.
- An employment verification letter from Penelope Café that is dated August 10, 1990. This letter is signed by [REDACTED], who indicates that he or she is the president of the café. This letter indicates that the applicant worked for the Penelope Café from January 1987 until at least August 10, 1990. It is noted that the applicant indicated on her Form I-687 that her employment with the Penelope Café ended in June 1988, after which time she became a self-employed housekeeper. This inconsistency casts doubt on the accuracy with which the applicant has represented her employment to CIS.
- An employment verification affidavit from Continental Restaurant that is dated June 14, 1983. This affidavit is signed by an individual whose name is illegible who indicates that he or she is the manager of the restaurant. The affiant states that the applicant worked for the Continental Restaurant from October 1981 to December 1982. It is noted that the address of this restaurant as indicated on the letterhead, [REDACTED] in West End, New Jersey, is the applicant's claimed address from November 1981 to December 1982.

The director issued a request for additional documentation to the applicant on November 8, 2005. In this request, the director accorded the applicant 45 days within which to submit the following: documentation that indicated that the applicant attempted to file for legalization during the original filing period; and proof that the applicant resided continuously from January 1, 1982 until May 4, 1988. The director indicated this proof could include affidavits submitted with proof that an affiant was residing in the United States during the requisite period or records, tax returns, leases, rent receipts or other documents that would prove the applicant's continuous residence in the United States during the requisite period. In response to this request for evidence, the applicant submitted the following additional evidence:

- An affidavit from [REDACTED] that was notarized on December 5, 2005. With his affidavit, the affiant submitted a building permit from 1981, a business certificate from 1982 and his birth certificate, showing he was born in the United States. The affiant asserts that he first met the applicant in Trinidad. He asserts that she entered the United States in 1981 and that they stayed together for short periods in the 1980's and were in a relationship until around Christmas time in 1987.
- A letter from [REDACTED], who indicates that he is the Resident Agent in Charge of the United States Department of State Diplomatic Security Service. [REDACTED] submits a business card with his letter. This letter is dated December 7, 2005. Mr. [REDACTED] states that he has known the applicant professionally since 1987. However, Mr. [REDACTED] does not state the frequency with which he saw the applicant during the

requisite period or indicate that he knows the applicant resided in the United States for part or all of the requisite period.

It is noted that the applicant also submitted documents as proof of her residence in the United States subsequent to the requisite period. The issue in this proceeding is whether the applicant has submitted sufficient evidence to meet her burden of proving that she resided continuously in the United States for the duration of the requisite period. Because these documents are pertinent to years subsequent to the requisite period, they are not relevant to the matter at hand and therefore, they are not discussed here.

The director issued a Notice of Intent to Deny (NOID) to the applicant on September 29, 2005. In this NOID, the director stated that she intended to deny the application for the following reasons:

1. Though the applicant stated at the time of her interview with a CIS officer on November 8, 2005 that she first entered the United States in October 1981 and departed the United States for the first time after that entry in July 1987, CIS records indicated that the applicant also departed from the United States on at least three occasions prior to that, in September 1983, December 1983, and December 1984. The director stated that this discrepancy and the dates associated with CIS records regarding the applicant's entries into and exits from the United States during the requisite period indicated that she only visited the United States for short periods of time during the requisite period.
2. The applicant stated on her Form I-687 submitted in 2005 that she was absent from the United States once during the requisite period when she traveled to Trinidad to visit family and she was consistent during her interview on November 6, 2005. However, in the applicant's Form I-687 submitted to establish class membership in 1990, the applicant stated that she went to Canada during that time. It is noted that the applicant's Form I-687 submitted in 1990 actually states that the applicant went to Trinidad during this absence. However the applicant's Form for Determination of Class Membership submitted with her 1990 Form I-687 states that the applicant went to Canada at that time.
3. The director further stated that her office found that the documentation submitted in support of the application lacked credibility.

The director granted the applicant 30 days within which to submit additional evidence in support of her application.

Because the applicant failed to submit a rebuttal or additional evidence for consideration in response to the director's NOID, the Acting District Director denied the application for temporary residence on December 18, 2006. The acting director stated that the applicant failed to meet her burden pursuant to the regulation at 8 C.F.R. § 245a.2(d)(5).

On appeal, the applicant submits a brief through counsel and additional evidence for consideration.

In a brief dated January 26, 2007, counsel asserts that the applicant has resided in the United States since October, 1981. Counsel responds to each of the director's grounds for denial separately.

1. Counsel asserts that the applicant's friend, [REDACTED] had a pleasure boat and that he and the applicant frequently spent weekends on the boat and that when they did so they traveled over the Canadian border. Counsel asserts that the applicant was not inspected every time they left because they were often "waived in." Counsel argues that the applicant was not aware that she left the United States during these trips. Counsel states that the dates that correspond with the additional absences noted by CIS were dates when the applicant was gone on weekend and other holiday trips and that sometimes the applicant's entry into or exit from the United States occurred without inspection.
2. Counsel states that the individual who prepared the applicant's Form I-687 in 1990 erred in its completion, stating that the applicant went to Canada instead of Trinidad in 1987. The AAO notes here that though the applicant's Form for Determination of Class Membership indicates that the applicant traveled to Canada at that time, her Form I-687 actually states that she traveled to Trinidad at that time. Counsel also states that the applicant resided in the Bronx, New York in 1987 and that while she resided there, a roommate both raped the applicant and stole all of her documents in 1987.
3. Counsel states that the applicant has testified consistently. Counsel then states that the applicant resided in New Jersey, New York and Florida during the requisite period. Counsel states that because of the traumatic events experienced by the applicant in 1987, it is difficult for the applicant to remember dates.
4. Counsel reiterates that the applicant's departures from the United States during the requisite period were brief, casual and innocent.

The applicant also submits an affidavit from [REDACTED] that is dated January 25, 2007. The affiant states that he resides approximately ten minutes from the Canadian border and that he made frequent trips into Canada during the 1980's. He states that when he re-entered the United States from Canada during those years he was often waived in. He states that he and the applicant frequently traveled into Canada in this manner, particularly during the period from 1983 to 1985.

The AAO has reviewed the documents in the record that are relevant to the applicant's claim that she resided continuously in the United States for the duration of the requisite period and has found that she has failed to meet her burden of proof.

Though she has consistently stated that she first entered the United States in October 1981, she has submitted an affidavit from [REDACTED] that states that the applicant first entered the United States in June 1981 and that she spent the summer of 1981 with him. This inconsistency casts doubt on the applicant's claimed date of first entry into the United States.

The applicant stated on her Form I-687 that she only resided in New Jersey for the duration of the requisite period. However, she has submitted evidence, including an interim Driver's License, that indicates her address was in North Tonawanda, New York. On appeal, counsel asserts that the applicant resided in New Jersey, New York and Florida during the requisite period. The affiant has also submitted an affidavit from [REDACTED] who is the superintendent of a building at [REDACTED] in Jersey City. [REDACTED] states that the applicant resided in that building from January 1986 until December 1987. However, the applicant has stated that she resided at [REDACTED] during the corresponding dates. These inconsistencies cast doubt on the applicant's claimed residence in the United States during the requisite period.

The applicant has submitted an affidavit from the [REDACTED] Café which indicates that the applicant was employed at the café on dates that are not consistent with what the applicant stated on her Forms I-687. These inconsistencies cast doubt on the credibility of the assertions made by the applicant regarding her residence and her employment in the United States.

Though Counsel asserts that the applicant's former roommate in the Bronx, New York stole items from her in 1987, the applicant did not ever indicate that she resided in New York State at any point in time on her Form I-687.

Though the AAO finds it is plausible that the applicant made multiple brief trips to Canada during the requisite period and was not inspected on every occasion when she entered through a port near her friend [REDACTED]'s residence, this does not explain how CIS records would indicate that the applicant entered the United States through New York City in May of 1985.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the 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 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.