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U.S. Citizenship  
and Immigration  
Services

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FILE:

MSC-05-216-10262

Office: NEW YORK

Date:

AUG 29 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 (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, counsel asserts that the director's decision to deny the application based on a failure to submit additional documents is not in accord with the facts.

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 May 4, 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 she has resided in Bronx, New York since January 2002. The applicant failed to show on her application any residential addresses in the United States prior to this date. The applicant’s failure to provide this information undermines the credibility of her claim of continuous residence in the United States during the requisite period.

The applicant submitted as corroborating evidence an affidavit from [REDACTED] dated February 1, 2006. This affidavit provides, “. . . I knew [REDACTED] since She entered the united states in 1981. I use too [sic] teach her how to speak English. She was in contact With me all this period of time until she went back to Africa for A short time and return [sic] to the United States. I further testify that she has been turned away by the I.N.S. while attempting to legalize her unlawful status. . . .” This affidavit fails to establish how [REDACTED] first became acquainted with the applicant. Based upon the applicant’s date of birth, March 24, 1975, she was six years old in 1981. It is therefore reasonable to expect [REDACTED] affidavit to explain whether he met the applicant through her parents or another guardian. Furthermore,

the applicant showed on her Form I-687 that she first resided in the United States in January 2002. [REDACTED] assertion that the applicant resided in the United States in 1981 is inconsistent with her Form I-687. Moreover, the affidavit offers little detail on [REDACTED] relationship with the applicant in the United States during the requisite period. There is no information on how frequently they were in contact with each other or the type of contact that they maintained. The affidavit refers to the applicant's travel to Africa for a short period of time. However, at part #32 of the Form I-687, where applicants are asked to list their absences from the United States, the applicant indicated that this question was not applicable. 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.

On February 1, 2006, the director issued a Notice of Intent to Deny (NOID) to the applicant. The director noted that the applicant, who was a six year old child at the time of her entry, did not provide credible affidavits from any adult responsible for her care and financial support. The director noted that the applicant did not submit school records, immunization records or medical records as proof of her presence in the United States during the statutory period. The director determined that the applicant did not establish by a preponderance of the evidence her continuous residence in the United States during the requisite period. The director concluded that the applicant failed to meet her burden of proof. The director afforded the applicant a period of 30 days to submit additional evidence to overcome the basis for the NOID.

Pursuant to 8 C.F.R. § 245a.2(d)(6), to meet her burden of proof, an applicant must provide evidence of eligibility apart from her own testimony. The regulations at 8 C.F.R. § 245a.2(d)(3) provide an illustrative list of contemporaneous documentation that may be furnished 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." 8 C.F.R. § 245a.2(d)(3)(vi)(L).

On April 13, 2006, the director denied the application. In denying the application, the director determined that the applicant failed to submit additional evidence for consideration within the time allotted. The director concluded that the applicant failed to meet her burden of proof in the proceeding.

On appeal, counsel asserts that the applicant submitted a declaration in response to the NOID. Counsel states that the director's decision to deny the application based on a failure to submit additional documents is not in accord with the facts. Counsel submits a copy of an affidavit from [REDACTED] that he asserts was furnished in rebuttal to the NOID.

The affidavit from [REDACTED] dated February 22, 2006, provides, “[p]lease be advised that I am a U.S. Citizen, presenting [sic] living at [REDACTED] and I certify that I have known [REDACTED] and her father [REDACTED] since 1981. I have also provided financial assistance to [REDACTED] over the years. . . .” This affidavit fails to explain how [REDACTED] first became acquainted with the applicant and her father. Notably, the affidavit does not establish the location of where they first met. There is no indication that they first became acquainted in the United States. Furthermore, the affidavit does not establish [REDACTED]’s relationship with the applicant in the United States during the requisite period. There is no information on how frequently they were in contact with each other or the type of contact that they maintained. 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.

In summary, the applicant has failed to provide credible, reliable and probative evidence of her residence in the United States during the requisite period. The applicant has not provided sufficient evidence to establish that she entered the United States prior to January 1, 1982. Nor has she established that she continuously resided in the United States during the requisite period. The applicant has been given the opportunity to satisfy her burden of proof with a broad range of evidence. *See* 8 C.F.R. § 245a.2(d)(3). The applicant submitted as evidence of her residence in the United States during the requisite period two affidavits. These affidavits are without any probative value as evidence of her residence in the United States during the requisite period. On appeal, the applicant failed to submit any other documentary evidence in support of her application. Pursuant to 8 C.F.R. § 245a.2(d)(6), the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. Since the applicant’s evidence is without any probative value it is not sufficient to meet her burden of proof in this proceeding.

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 the applicant 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.