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U.S. Citizenship  
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Services

**PUBLIC COPY**

[REDACTED]

FILE:

MSC-06-097-12725

Office: NEW YORK

Date:

**AUG 29 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. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed or rejected, 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.

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 failed to establish, by a preponderance of the evidence, continuous unlawful residence during the requisite period. Specifically, the director found that the affidavits submitted by the applicant contained contradictory information and were not “verifiable.” The director also found that the documentation submitted by the applicant did not prove her continuous residence throughout the entire requisite period.

On appeal counsel states that the director erred in finding that the affidavits submitted by the applicant contained contradictory information and states that the director failed to give the appropriate weight to the affidavits.

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)(1) 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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that she resided in the United States for the duration of the requisite period. Here, the applicant has not met her burden of proof.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on January 5, 2006. At part #30 of the I-687 application, where applicants were asked to list their residences in the United States since their first entry, the first period of residence listed by the applicant began in March of 1981. The first period of employment listed by the applicant, at part #33 of the I-687 application, began in December of 1981. The only absence from the United States listed by the applicant was a trip to Canada in July of 1987.

With respect to the applicant’s continuous residence in the United States during the requisite period, the record contains significant documentation from late 1985 through the end of the requisite period. This documentation includes money order receipts, retail receipts, letters and affidavits, pay stubs, W-2 Wage and Tax Statement, letters from utility companies, telephone bills, envelopes sent to the applicant, a copy of a lease and various other documents.

Although the documentation submitted by the applicant from the end of 1985 and later is substantial, the burden is on the applicant to prove her residence in the United States throughout the entire requisite period. The applicant submitted the following documentation to prove her residence from prior to January 1, 1982 until 1985:

- Affidavit of [REDACTED], signed and notarized on November 2, 1991. The affiant states that she met the applicant at Lady of Lords church and claims to have personal knowledge of the applicant's residence from March 1981 until the signing of the affidavit. Although the dates and place of residence are consistent with information provided by the applicant on her I-687 application, the affidavit lacks details such as the circumstances under which the affiant came to know the applicant or how she dates her initial acquaintance with the applicant. Lacking such relevant detail, the affidavit can be afforded only minimal weight as evidence of the applicant's residence in the United States during the requisite period.
- Affidavit of [REDACTED] signed and notarized October 31, 1991. The affiant states that she and the applicant used to work on the same jobs and claims to have personal knowledge of the applicant's residence from March 1981 until the signing of the affidavit. Although the dates and place of residence are consistent with information provided by the applicant on her I-687 application, the affidavit lacks details such as the circumstances under which the affiant came to know the applicant or how she dates her initial acquaintance with the applicant. Lacking such relevant detail, the affidavit can be afforded only minimal weight as evidence of the applicant's residence in the United States during the requisite period.
- Affidavit of [REDACTED] signed and notarized on August 14, 2006. The affiant states that she has known the applicant since March 1981.<sup>1</sup> The record also includes an affidavit of [REDACTED] signed and notarized on October 17, 1991, and an undated letter from Ms. [REDACTED]. The affiant states that she met the applicant at a party in March 1981. In the affidavit from 1991, the affiant also lists addresses where the applicant resided during the requisite period. Even taking both affidavits and the letter together, there is a significant lack of detail. For example, the affiant fails to explain the circumstances under which she came to know the applicant or how she dates her initial acquaintance with the applicant. She also fails to provide any details regarding the nature and frequency of her contact with the applicant during the requisite period. Lacking such relevant details, the affidavits and letter can be afforded only minimal weight as evidence of the applicant's residence in the United States during the requisite period.
- Affidavit of [REDACTED] signed and notarized on August 7, 2006. The affiant states that he has known the applicant since 1981 and that he met the applicant at a party through a friend. The affiant does not explain how he dates his initial acquaintance with the applicant or the nature and frequency of his contact with the applicant during the requisite period. The record also contains several letters written by [REDACTED] in which he describes a trip that he took to Canada with the applicant from July 1, 1987 to July 4, 1987. These letters do

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<sup>1</sup> According to the director, [REDACTED] stated in this affidavit that "she has known you since 1981 to the present, she also stated that she met you at a party in October 1991." As noted by counsel, this is incorrect. The affiant stated "I [REDACTED] at a party. In Oct. 1991 I was the same person that signed an affidavit of witness." The affiant does not claim to have met the applicant at a party in 1991. It is not clear whether this was a misreading of the affidavit by the director, or a typographical error in the decision. However, it is clear from the affidavit that [REDACTED] claims to have known the applicant since March 1981.

not address the deficiencies in the affidavit in that the letters do not explain how Mr. [REDACTED] dates his initial acquaintance with the applicant or the nature of his relationship with the applicant during the requisite period. Because the affidavit is lacking in significant detail, it will be given only minimal weight as evidence of the applicant's residence in the United States during the requisite period.

- Affidavit of [REDACTED] signed and notarized October 18, 1991. The affiant states that the applicant resided with him from March 3, 1981 until July 20, 1987 at [REDACTED]. The affiant does not explain under what circumstances he came to know the applicant or how he dates his initial acquaintance with the applicant. In light of these deficiencies this affidavit has little probative value and will be given minimal weight as evidence of the applicant's residence in the United States during the requisite period.
- Affidavit of [REDACTED] signed and notarized on August 9, 2006. The affiant states that he has known the applicant since February, 1984, when he notarized a document for the applicant at his office. The affiant also claims to have prepared the applicant's taxes each year since then. However, the record does not contain any of the tax records prepared by the affiant. The record also contains a letter from [REDACTED] dated September 1, 2001 in which he states that he has known the applicant for seventeen years, and a letter dated February 15, 1992 in which he states that he has known the applicant for eight years. The letters and affidavit fail to show that [REDACTED] had personal knowledge of the applicant's residence during the requisite period and lack details regarding the nature and frequency of his contact with the applicant. The affidavit and letters therefore have minimal weight as evidence of the applicant's residence in the United States during the requisite period.
- Letter from [REDACTED] stating that the applicant worked for her as a housekeeper from January 1984 until November 1987. However, the letter is deficient in that it does not comply with the regulations relating to past employment records. For example, the letter does not provide the applicant's address at the time of employment. 8 C.F.R. § 245a.2(d)(3)(i). Even absent compliance with the regulation, the letter is considered a "relevant document" under 8 C.F.R. §245a.2(d)(3)(iv)(L). See, *Matter of E-M-* 20 I&N Dec. at 81. However, the letter lacks probative details that would lend it credibility. The letter therefore has minimal weight as evidence of the applicant's residence in the United States during the requisite period.

In addition, the record shows that the applicant filed an I-601 Application for a Waiver of Ground of Excludability on May 31, 1990. Information in this application tends to indicate that the applicant entered the United States in 1985. At part 10 of the application, where the applicant is asked to provide the reason that she was declared inadmissible to the United States, the applicant provided the following as the reason "Applicant entered the United States without inspection on September 26, 1985 at Miami, Florida." Part 11 of the application asked applicants to list previous periods in the United States. The applicant responded "N.Y., N.Y. 9/85 – Present." The statements on the I-601 application conflict with the information provided by the applicant in connection with her I-687 application. This inconsistency detracts from the credibility of the applicant's claims.

The evidence must be evaluated not by the quantity of evidence alone but by its quality. The absence of sufficiently detailed 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 applicant's reliance upon documents with minimal probative value, and the inconsistencies with the statement made by the applicant in an earlier I-601 application, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States throughout the requisite period 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.