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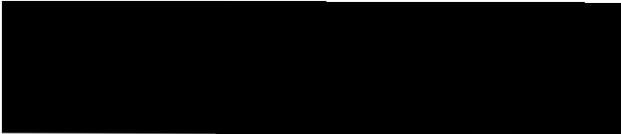
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
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FILE: [REDACTED]
MSC-05-363-12091

Office: NATIONAL BENEFITS CENTER

Date: FEB 05 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:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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 Director, National Benefits Center. 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 furnishes additional documentation as evidence of her residence in the United States during the requisite 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)(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 submitted evidence is not relevant, probative, and credible.

The record shows that the applicant submitted a Form I-687 application and supplement to Citizenship and Immigration Services (CIS) on September 28, 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 reported her first address in the United States to be in Miami, Florida from April 1982 until May 1987. At part #33 where applicants were asked to list their employment in the United States since entry, the applicant responded that she was self employed in private child care without any specific information.

The applicant’s Form I-687 application indicates that she first resided in the United States in April 1982. The primary eligibility requirement for temporary resident status is that an applicant must establish that she entered the United States before January 1, 1982. *See* Section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2). The applicant has failed to provide any information on her Form I-687 application to establish her continuous unlawful residence in the United States since prior to January 1, 1982.

The applicant submitted as supporting evidence with her Form I-687 application, copies of her birth certificate, Florida driver’s license, high school diploma, children’s birth certificates, and the

biographical page of her passport. Since these documents are all dated outside the requisite time period, they are not relevant to this proceeding. The applicant also submitted a statement attesting that she was four years old when she came to the United States with her parents. The applicant's own statement is not sufficient evidence of her eligibility for temporary resident status. 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 director denied the application for temporary residence on July 26, 2006. The director determined that based on the lack of evidence in the record, the applicant failed to meet her burden of proof in the proceeding. The director concluded that the applicant failed establish by a preponderance of the evidence her claim of continuous residence in the United States during the requisite period.

On appeal, the applicant furnishes additional evidence in support of her application. The applicant submits with this evidence an unsigned letter that provides, "I have lived in this country for most of my life, since 1982 . . ." Pursuant to Section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2), an applicant must establish that she entered the United States *before* January 1, 1982 to be eligible for temporary resident status. As noted, the applicant's Form I-687 application also indicates that she first resided in the United States in April 1982. The applicant's assertion that she has resided in the United States since 1982 is *prima facie* evidence of her ineligibility for temporary resident status.

The additional documentation submitted on appeal fails to overcome the *prima facie* evidence of the applicant's ineligibility. The applicant submitted the following documentation:

- A notarized letter from [REDACTED] which provides, "[t]his is to inform you that I have known [REDACTED] as from [sic] a young girl growing up and to [sic] this present time." This letter does not contain any information on when [REDACTED] first became acquainted with the applicant and the extent of his contact with the applicant during the requisite period. Furthermore, there is no information to indicate that [REDACTED]'s initial contact with the applicant was while she was residing in the United States. Therefore, this letter is not probative evidence of the applicant's residence in the United States during the requisite period.
- Notarized letters from [REDACTED] and [REDACTED] which provide that the authors have respectively known the applicant since 1990 and 1989. These letters are not relevant to this proceeding because the authors first met the applicant on dates subsequent to the requisite period.
- A notarized letter from [REDACTED] that provides, "I [REDACTED] have known [REDACTED] since 1987 until present time. She has [l]ived close to my family in *New York* as a small child" (emphasis added). This letter fails to provide any details on how [REDACTED] first became acquainted with the applicant and the extent of their contact during the requisite period. Furthermore, this letter is inconsistent with the applicant's Form I-687 application, which provides that the applicant has resided in

Florida during her entire period of residence in the United States. Hence, this letter is not credible and reliable evidence of the applicant's residence in the United States during the requisite period.

- The applicant submitted her marriage certificate issued in New York, dated March 9, 1999, and divorce decree issued in Florida, dated July 17, 2001. These documents are not relevant to this proceeding because they are dated outside the requisite period.

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). The applicant has failed to provide any reliable evidence that would indicate she resided in the United States during the requisite time 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's failure to provide any credible and probative evidence to establish her continuous residence in the United States during the requisite period renders a finding that the applicant has failed to satisfy her burden of proof, as delineated in 8 C.F.R. § 245a.2(d)(5).

In conclusion, the applicant's own testimony on her Form I-687 application and appeal statement indicate that she first resided in the United States in 1982. Under section 245A of the Act, the applicant must establish that she entered the United States *before* January 1, 1982. The applicant's failure to meet this residence requirement renders her ineligible for temporary resident status. The applicant has failed to overcome this assessment of her ineligibility with probative evidence of her residence in the United States during the requisite period. 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.