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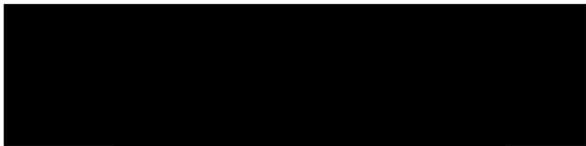
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
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Services

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FILE: [REDACTED]
MSC 05 286 11877

Office: NEW YORK

Date: FEB 08 2008

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Temporary Resident Status under 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. All documents have 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 District Director, New York. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The district director denied the application on the ground of abandonment after the applicant failed to appear for an interview. The applicant asserts that she never received notice of the scheduled interview and never intended to abandon her application.

The record shows that the applicant filed a Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (the Act), together with a CSS/Newman (LULAC) Class Membership Worksheet, at the New York District Office on July 13, 2005.

In a Notice of Intent to Deny (NOID) dated November 15, 2005, the director advised the applicant that she had failed to provide documentation establishing (1) her continuous unlawful residence in the United States from before January 1, 1982 until the date (in 1987 or 1988) when she (or her parent or spouse) was turned away by the legacy Immigration and Naturalization Service (INS) when trying to apply for legalization, (2) her continuous physical presence in the United States from November 6, 1986 until the date (in 1987 or 1988) when she (or her parent or spouse) was turned away by the legacy Immigration and Naturalization Service (INS) when trying to apply for legalization, and (3) her admissibility as an immigrant. The applicant responded to the NOID on December 16, 2005 by submitting photocopies of a "Certificate of Award" for "student merit" she was given at Gallow School (location unidentified) on March 10, 1983; a bank statement from Bank of America issued in August 2005; and the biographical page of her passport from the Republic of Singapore, issued on March 21, 2001.

In a decision dated June 27, 2006, the district director denied the application on the ground of abandonment after the applicant's nonappearance, without explanation, at an interview scheduled with an immigration officer on March 15, 2006. It was noted in the decision that under 8 C.F.R. § 103.2(b)(15) a denial due to abandonment may not be appealed. Furthermore, legalization applicants do not have motion rights. See 8 C.F.R. § 245a.20(c).

On appeal the applicant asserts that she did not receive any notice of the appointment scheduled for March 15, 2006. She acknowledges, however, that she did receive the NOID issued previously in November 2005. The AAO notes that the NOID, as well as the interview notice (Form G-56) from the New York District Office dated February 14, 2006 (a copy of which is in the record), were addressed to the applicant's correct address, as written on the envelope submitting the Form I-687 in July 2005 and in the applicant's subsequent correspondence. There is no evidence in the file indicating that the interview notice was returned to the New York District Office.

The regulation at 8 C.F.R. § 103.2(b)(13) – *Effect of failure to respond to a request for evidence or appearance* – provides, in pertinent part, as follows:

[I]f an individual requested to appear . . . for an interview does not appear, the Service does not receive his or her request for rescheduling by the date of the . . . interview, or the applicant . . . has not withdrawn the application . . . the application . . . shall be considered abandoned and, accordingly, shall be denied.

As the record indicates that the interview notice was mailed by the New York District Office to the applicant's most recent (and correct) address, that it was not returned the New York District Office, that the applicant did not appear for the interview, and that the applicant did not requesting a rescheduling, the AAO concurs with the district director's denial of the application due to abandonment. Accordingly, the district director's decision will be affirmed.

Beyond the decision of the director, the AAO notes that the evidence submitted in response to the NOID was insufficient to establish the applicant's continuous residence and continuous physical presence in the United States during the requisite time periods.

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.

In this case the applicant submitted only one piece of documentation dating from the 1980s – the award certificate from Gallow School dated March 10, 1983. Given the lack of documentation demonstrating the applicant’s residence and physical presence in the United States during other years of the 1980s, it is concluded that the applicant has failed to establish by a preponderance of the evidence that she 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*. Accordingly, the applicant is ineligible for temporary resident status under section 245A of the Act on this basis, and the application must be denied on this ground as well.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.