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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

LC

PUBLIC COPY

[REDACTED]

FILE:

[REDACTED]
MSC 05 222 10527

Office: NEWARK

Date: FEB 08 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. 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.


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 on May 10, 2005. 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 noted that the applicant had failed to address issues raised in the Notice of Intent to Deny, specifically pertaining to the deficiencies in the affidavits provided in support of her application. The director also questioned the credibility of two alleged lease agreements submitted by the applicant. 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 for the applicant states that the decision was rendered against the weight of the evidence submitted and that the affidavits were not given due consideration. Counsel asserts that the director failed to consider the difficulty of obtaining other documentary evidence over the passage of time, and wrongfully denied the application because the applicant submitted only 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 continuously resided in the United States in an unlawful status 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 May 10, 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 showed that she resided at [REDACTED] in New York, New York from November 1981 until July 1992.

As noted above, the applicant has the burden of proving by a preponderance of the evidence that she has resided in the United States for the requisite period. 8 C.F.R. § 245a.2(d)(5). To meet her burden of proof, an applicant must provide evidence of eligibility apart from her own testimony. 8 C.F.R. § 245a.2(d)(6). Pursuant to the regulation at 8 C.F.R. § 245a.2(d)(3) documentation an applicant may submit to establish proof of continuous residence in the United States may include, but is not limited to: 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 applicant submitted the following evidence in support of her claim of continuous residence in the United States during the requisite period.

- An affidavit of witness dated January 4, 2006 from [REDACTED] who indicates that he is a resident of Takoma Park, Maryland. [REDACTED] provides the applicant's current address and states that he is aware of the applicant's presence and continuous residence in the United States since 1981 except for two brief absences. [REDACTED] provides a copy of his U.S. Certificate of Naturalization issued in 1985 as proof of his identity.
- An affidavit of witness dated January 6, 2006 from [REDACTED], who indicates that he is a resident of Silver Spring, Maryland born in Pennsylvania in 1970. [REDACTED] states that he is aware and has personal knowledge of the applicant's residence since 1981, and that such continuous residence was interrupted by a brief trip abroad. He provides the applicant's current address in Elizabeth, New Jersey. [REDACTED] provides a copy of his birth certificate and Maryland driver's license as proof of his identity.

Here neither affiant stated how, where or under what circumstances they first met the applicant; how they date their acquaintance with her; or how frequently they saw her during the requisite period. Neither affiant indicated that he actually lived in New York during the requisite period, or otherwise clarified the source of the information to which they are attesting. The affidavits are significantly lacking in details regarding the events and circumstances of the applicant's residence in the United States that would lend credibility to the claim that the affiants had a bona fide relationship with the applicant during the requisite period. Further, they lack any verifiable information, such as the applicant's address of residence during the requisite period. Because of these deficiencies, these affidavits are severely lacking in probative value.

- A letter from [REDACTED], a resident of New York, New York, who states that she has known the applicant since 1982 and attests to the applicant's good character. The letter is not dated, not notarized, and is not accompanied by proof of [REDACTED] identity or evidence that she resided in the United States during the requisite period. She did not indicate exactly when, where or how she met the applicant, how she dates her acquaintance with her, how frequently she had contact with her during the requisite period, or provide any other details regarding the events and circumstances of the applicant's residence in the United States, such as her addresses of residence. It is noted that [REDACTED] does not specifically state that she met the applicant in the United States or that she has personal knowledge that the applicant has continuously resided in the United States. Accordingly, this letter does not carry any evidentiary weight.
- A letter from [REDACTED] a resident of New York, New York, who states that she has known the applicant since 1986 and attests to the applicant's good character. This letter is also not dated, not notarized and is not accompanied by proof of the affiant's identity or residence in the United States during the requisite period. All of the deficiencies discussed above also apply to this letter. In addition, this individual does not claim to have knowledge regarding the applicant prior to 1986.

The director issued a Notice of Intent to Deny (NOID) on May 2, 2006. The director noted that the applicant testified during her interview with a CIS officer on October 21, 2005 that she entered the United States in November 1981 with a visitor visa, but she failed to provide evidence of her admission. The director further noted that none of the affidavits submitted contained sufficient detail in describing the affiants' relationship with the applicant. Finally, the director observed that although the applicant claims to have entered the United States when she was six years old, she provided no school records to corroborate that statement.

In response to the NOID, the applicant re-submitted a copy of the affidavits from [REDACTED] and [REDACTED]. The applicant also submitted a copy of a lease agreement dated January 1, 1980, between [REDACTED] as landlord and S [REDACTED] as tenant, for premises located at [REDACTED] in New York, New York. The agreement states that the apartment will be occupied by "[REDACTED] and her ward [REDACTED], to be united)." The lease agreement is not notarized or witnessed, and based on its appearance, was likely created using word processing software that did not exist in 1980. The lease refers to the tenant by two different names, and although only a photocopy was provided, it is clear that correction fluid has been utilized in various places on the agreement. The applicant also submitted a "modification to lease agreement" dated January 2, 1982, in which the applicant was added as a "new family member" and tenant. As with the lease agreement, the signatures were not notarized or witnessed, and the appearance of the document quite clearly suggests that it was created using word processing software that did not exist in 1982. There is no other evidence in the record to corroborate the claim that the applicant ever lived at this address.

The director denied the application on June 12, 2006. In denying the application, the director acknowledged the applicant's response to the NOID, but noted that she did not address the deficiencies in the affidavits submitted or her lack of school records. The director noted that the lease agreements were not notarized to show that they were actually executed on the claimed dates, and noted that "it is obvious from the fonts used on the lease agreements that they were not actually produced in 1980 or 1982." In denying the application, the director concluded that the new evidence and evidence already included in the record was insufficient to establish the applicant's eligibility for temporary residence under Section 245A of the Act.

On appeal, counsel for the applicant states that the director's decision was rendered against the weight of the evidence, and contends that the affidavits were not given due consideration. The applicant suggests that the director failed to consider the difficulty of obtaining documentation other than affidavits, as stipulated in the settlement agreements, and wrongfully denied the application because the applicant failed to submit documentation other than affidavits.

Counsel's statements are not persuasive. As is stated above, 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 been given the opportunity to satisfy her burden of proof with a broad range of evidence pursuant to 8 C.F.R. § 245a.2(d)(3). However, this applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period, other than a lease agreement that has no probative value due to the deficiencies discussed above. Notably, the applicant does not address the lease agreement on appeal and instead chooses to rely on the affidavits she previously submitted. The applicant has also failed to address her lack of school records, given that she

was between the ages of six and 13 years old during the requisite period. The applicant has submitted attestations from only four individuals that are significantly lacking in detail and can be given very little weight for the reasons discussed above. Although she was notified of these deficiencies, she has opted not to provide more detailed affidavits in support of her claim.

While it is true that an applicant's failure to provide documentary evidence apart from affidavits cannot be the sole reason for the denial of an application, an application that is lacking in contemporaneous documentation cannot be deemed approvable if considerable periods of claimed continuous residence rely entirely on affidavits that are lacking in credibility. Again, the affidavits submitted did not contain substantive information or relevant testimony pertaining to the applicant's claim of continuous residence during the requisite period.

The absence of sufficiently detailed supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of this 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, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States for 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.