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U.S. Citizenship
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FILE: [REDACTED]
MSC-05-285-12115

Office: New York

Date: FEB 11 2006

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.


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, the applicant asserts that she provided credible testimony of her entry into the United States in 1981. The applicant claims that she has submitted two affidavits which establish by a preponderance of the evidence 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.* 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 (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 July 12, 2006. The applicant signed this form under penalty of perjury, certifying that the information contained in the application is true and correct. 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 New York, New York from September 1981 until November 1985. At part #33 of the application, the applicant reported her first employment in the United States to be as a housekeeper for [REDACTED] in Montclair, New Jersey, from November 1981 until May 1988. This information indicates that the applicant continuously resided in the United States during the requisite period; however the applicant has failed to corroborate this testimony with credible and probative evidence.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant filed with her application notarized letters from [REDACTED] and [REDACTED]. The letter from [REDACTED] provides, “I, [REDACTED], a United States Citizen . . . testifies [sic] that [REDACTED] has been living in the United States since 1981.” This letter can only be afforded

minimal value as corroborating evidence because it is vague and lacks significant detail. While not required, the letter is not accompanied by proof of the author's identity or residence in the United States. The letter lacks a phone number; therefore, its content is not readily verifiable. The letter also fails to provide detailed information on how the author met the applicant and the extent of their contact during the requisite period.

The applicant submitted a fill in the blank document entitled "affidavit of witness" from [REDACTED]. This letter states that [REDACTED] has personal knowledge that the applicant has resided in the United States since September 1981. The letter indicates that [REDACTED] has this knowledge because the applicant was employed by her as a babysitter. This information is inconsistent with the applicant's Form I-687 application, which provides that the applicant was employed with [REDACTED] from October 1996 until April 2002. Therefore, this letter is not credible evidence of the applicant's residence in the United States during the requisite period.

On March 20, 2006, the district director issued a Notice of Intent to Deny (NOID) to the applicant. The NOID provides that the applicant failed to submit documentation to establish her eligibility for Temporary Resident Status. The director noted, "[c]redible affidavits are those, which include some document identifying the affiant, some proof the affiant was in the United States during the statutory period, and some proof that there was a relationship between you and the affiant." The applicant was afforded thirty (30) days to provide additional evidence in response to the NOID.

The applicant responded to the NOID with another letter from [REDACTED]. [REDACTED] amended letter provides, [REDACTED] [sic] has been living in the United States since 1981. She stays with me and she contributes adequately towards the payment of con edison, telephone and other bills. She is a hardworking, responsible and reliable individual." [REDACTED] attached to this letter a copy of her naturalization certificate as evidence of her identity. However, this letter fails to overcome the discrepancies noted in the director's NOID. The letter neglects to detail [REDACTED]'s presence in the United States and relationship with the applicant during the requisite period.

In denying the application the director determined that the applicant failed to submit documents that would constitute by a preponderance of the evidence her residence in the United States. The director reiterated, "[c]redible affidavits are those, which include some document identifying the affiant, some proof the affiant was in the United States during the statutory period, and some proof that there was a relationship between you and the affiant." The director concluded that the applicant failed to meet her burden of proof in the proceeding.

On appeal, the applicant asserts that she has already provided credible testimony and affidavits regarding her entry into the United States in 1981 and continuous presence until May 1988. The applicant requests the AAO to review the existing documentation.

The regulations allow the applicant to submit a broad range of documents to satisfy her burden of proof. *See* 8 C.F.R. § 245a.2(d)(3). The applicant's failure to provide any other 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). The documents previously submitted by the applicant can only be given minimal weight because they lack significant detail. The director's denial notice alerted the applicant to the deficiencies in her evidence; however the applicant neglected to remedy these deficiencies on appeal. Thus, the applicant has not demonstrated with relevant, credible and probative evidence that her claim is probably true pursuant to *Matter of E-M-, supra*.

In conclusion, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, as well as the inconsistency noted in the record, seriously detract 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 inconsistency in the record and the lack of credible supporting documentation, it is concluded that she 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.