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U.S. Citizenship  
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Services

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FILE:

Office: NATIONAL BENEFITS CENTER

Date: FEB 25 2008

MSC 06 017 10345

IN RE:

Applicant:

APPLICATION:

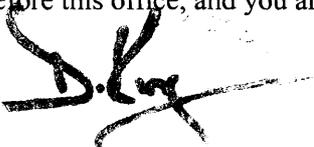
Application for Status as a Temporary Resident pursuant to Section 245A of the  
Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

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 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. Specifically, the director noted the affidavits presented do not attest to the applicant's entry into the United States before January 1, 1982, or residence in the United States as of January 1, 1982. Further, the director determined that the applicant has not submitted sufficient relevant, probative, and credible evidence to explain or answer the questions raised, concerning the applicant's residency, as stated in the Notice of Intent to Deny (NOID). 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.

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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his or her burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted an undated Form I-687 Application and Supplement to Citizenship and Immigration Services (CIS) on October 17, 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 her first address in the United States to be in San Diego, California, with no date stated, to present (approximately October 17, 2005 since the form is undated). Similarly, at part #33, she showed her first employment in the United States to be with [REDACTED] San Diego, California, working as a hair stylist with no commencement or current employment information noted on that Form. According to part #16 of the CIS Form I-687 Application, the applicant last came to the United States in 1993 with three absences noted in part #32 of that application which are 1987, 1988 and 1993 with no duration of absences stated.

The applicant submitted the applicant’s birth certificate evidencing her birth in the Republic of Mexico and a certificate of marriage that occurred on November 5, 2004, to [REDACTED] in California.

The applicant submitted the following additional documentation:

- Two declarations from [REDACTED] a citizen of Mexico who stated that he met the applicant “since I can remember,” or in 1979, in Sonora, Mexico as he stated their mothers “are good friends.” According to [REDACTED] he was a student and

young boy in Mexico when the applicant came to the United States. Information concerning the applicant was received from his mother who in-turn received it from the applicant's mother. According to [REDACTED] information about the applicant's life between before 1982, and between 1982 and May 1988 was received by these two mothers when contacted by the applicant. The applicant told him she entered the United States illegally through Tijuana, Mexico (and in the second declaration he said San Ysido, Mexico). [REDACTED] never entered the United States. [REDACTED] stated that he did speak with the applicant after she left on the telephone but "I'm [sic] barely remember" as he was young. This statement has minimal probative value in supporting the applicant's claim that she entered the United States in 1981 since all of [REDACTED]'s information was received indirectly and it was not his personal knowledge.

- Two declarations from [REDACTED] a citizen of Mexico now in the United States who stated that she is the applicant's mother and that she was in Mexico between January 1982 and May 1988. According to [REDACTED] she was a housewife in Mexico when the applicant came to the United States, entering illegally through San Ysido, Mexico. She stated that she "gave the applicant her blessings and she left." Thereafter, according to [REDACTED] she spoke to her daughter weekly and received mail from her but does not have the correspondence now. This statement has minimal probative value in supporting the applicant's claim that she entered the United States in 1981 since she herself was not present in the United States during the requisite period.
- Two declarations from [REDACTED] a citizen of Mexico, who stated that he knows the applicant from "school." [REDACTED] stated he was in Mexico between January 1982 and May 1988. According to [REDACTED] he was living in Mexico when the applicant came to the United States. [REDACTED] knows this because "We were neighbors we also grew up together so they told me he [sic she] had left to the United States." [REDACTED] did not state how the applicant entered the United States. According to [REDACTED] he would talk to the applicant by telephone after she left. This statement has minimal probative value in supporting the applicant's claim that she entered the United States in 1981 since all of [REDACTED]'s information was received indirectly rather than based upon his personal knowledge.
- A declaration from [REDACTED] a citizen of Mexico who stated that he first met the applicant in 1979 through his son. [REDACTED] stated he was in Mexico between January 1982 and May 1988. [REDACTED] stated that he knew that the applicant came to the United States before 1982 because he was told that by his son. He saw the applicant only once since she left Mexico and that was in 1994. This statement has minimal probative value in supporting the applicant's claim that she entered the United States in 1981 since all of [REDACTED]'s information was received indirectly and not his personal knowledge.

It is noted that all of the declarants stated they had no direct, personal knowledge when or where the applicant entered the United States since all resided in Mexico and became separated from the applicant. The lack of detail regarding the events and circumstances of the applicant's residence is

significant given each declarant's claim to have a friendship or family kinship with the applicant spanning the years. For these reasons, all of these declarations from the applicant's relative and former neighbors have very limited probative value as evidence of her continuous residence in the United States prior to January 1, 1982.

The director denied the application for temporary residence on June 9, 2006. In denying the application, the director found 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. Specifically, 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 her first address in the United States to be in San Diego, California, from no date stated to present (approximately October 17, 2005 since the form is undated). Similarly, at part #33, she showed her first employment in the United States to be for [REDACTED], [REDACTED], San Diego, California, as a hair stylist with no commencement or current employment information noted on that Form. Further, the affidavits presented did not provide relevant, probative, and credible evidence to attest to the applicant's entry into the United States before January 1, 1982, or residence in the United States.

In summary, the applicant has not provided any evidence of residence in the United States relating to the requisite period or of entry to the United States before January 1, 1982. The statements and affidavits lack credibility and probative value for the reasons noted.

In this case, 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 inconsistencies and contradictions 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 inconsistencies 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.