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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

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FILE:

MSC 06 103 11780

Office: NATIONAL BENEFITS CENTER

Date:

FEB 26 2008

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:

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. The director noted that all evidence submitted by the applicant was dated outside the statutorily relevant 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 states that she is seeking a "summary approval" and a chance to prove her case on its merits. She states that an interview would allow her to provide all the evidence she has in her possession. The applicant further asserts that she has submitted numerous documents relating to her stay in the United States and believes that the director abused his discretion by summarily dismissing her application without allowing her an opportunity to prove her case.

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 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 a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on January 11, 2006. 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 stated that she lived at [REDACTED] in Long Branch, New Jersey from 1981 until 2003. The applicant's residence information indicates that she continuously resided in the United States during the requisite period; however the applicant has failed to corroborate this testimony with credible and probative evidence.

The applicant failed to file with her application any corroborating evidence of her residence in the United States during the requisite period. 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).

Therefore, on March 29, 2006, the director issued a Notice of Intent to Deny (NOID) to the applicant, advising her that she failed to provide evidence that she entered the United States before January 1, 1982 and resided in a continuous unlawful status for the duration of the requisite period. The director afforded the applicant 30 days in which to provide evidence that she meets the requirements for temporary resident status.

The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that may be provided to establish proof of continuous residence in the United States during the requisite period. This list includes: 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." 8 C.F.R. § 245a.2(d)(3)(vi)(L).

Although the applicant responded to the NOID within 30 days, she did not submit any evidence that was relevant, as none of the evidence corroborated her claim of continuous residence during the requisite period. The applicant submitted: a photocopy of her Florida driver license issued on December 14, 1999; a copy of her IRS Individual Taxpayer Identification Number card; a photocopy of the biographical page of her Brazilian passport issued on September 9, 2005; photocopies of Form 1120S, U.S. Income Tax Return for an S Corporation for "KS Hardwood Floors Inc.," located in Florida for the years 2004 and 2005; a photocopy of the applicant's IRS Form 1040, U.S. Individual Income Tax Return for the year 2004; a photocopy of the birth certificate for [REDACTED], the applicant's son, who was born in New Jersey on July 26, 2004; copies of various billing statements issued to the applicant and her spouse in 2006; and a Certificate of Authority issued by the State of New Jersey to KS Hardwood Floors, Inc. in 2003.

The director denied the application on August 21, 2006. In denying the application, the director acknowledged the evidence submitted in response to the NOID, but noted that the applicant failed to submit any relevant evidence in support of her claim that she continuously resided in the United States for the duration of the requisite period, and had therefore failed to establish her eligibility for temporary residence under Section 245A of the Act.

On appeal, the applicant asserts that she has submitted documents relating to her stay in the United States. She believes that the director misapplied the law and abused his discretion by dismissing the case "therefore not allowing a chance to prove my case." The applicant states that an interview would allow her an opportunity to provide all the evidence she has in her possession. The applicant submitted additional documentation subsequent to filing the appeal; however, like the evidence previously submitted, none of the documentation corroborates the applicant's claim of continuous residence during the requisite period. The documentation submitted on appeal is dated between 2003 and 2007. Since the applicant's residence in the United States during this period is not at issue, this evidence is irrelevant and will not be considered.

Furthermore, the applicant's claims that the director misapplied the law and abused his discretion are without merit. As noted 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. at 79-80. 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. As stated above, 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).

Here, the applicant submitted no evidence of her eligibility apart from her own testimony and the director therefore could have no legitimate basis for determining that her claim is "probably true." Contrary to the applicant's statements, the director did provide the applicant with an opportunity to prove her case by issuing her a NOID allowing her 30 days to submit additional evidence in support of her claim. She was clearly advised that such evidence must demonstrate that she meets the applicable continuous residence and physical presence requirements for the requisite periods, and she chose to submit irrelevant evidence in response to the NOID. While she now states that an interview would allow her the opportunity to "provide all the evidence which I have in my possession," she provides no explanation as to what this evidence is or why this evidence was not submitted in response to the NOID, or in support of the appeal.

In summary, the applicant has not provided any evidence of residence in the United States relating to the requisite period except for her own testimony. The absence of relevant, probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts 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 lack of any relevant supporting documentation, 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*. 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.