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**U.S. Citizenship
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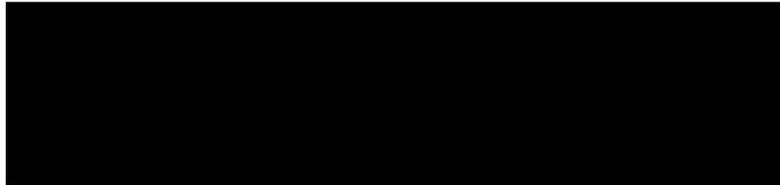
Office: NATIONAL BENEFITS CENTER

Date: JAN 28 2008

MSC 06 095 17165

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, on January 3, 2006. 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.¹ The director observed that the applicant had not provided any contemporaneous evidence of residence in the United States relating to the requisite period, and had submitted only one attestation, from [REDACTED].

The director noted that the affidavit from [REDACTED] was not accompanied by any identification, any proof that he was in the United States during the requisite period, or any proof that he had direct knowledge of the events being attested. The director concluded that the affidavit failed to overcome the unavailability of both primary and secondary evidence of the applicant's continuous residence in the United States during the requisite period. The director denied the application as 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 aware that she needs more evidence in support of her application. She attaches documentation to establish that [REDACTED] was residing in the United States during the requisite period. The evidence, which is dated in 1977, 1980, 1981 and 1984, shows that [REDACTED] was residing in Chicago, and later Dolton, Illinois during this period.

As stated in 8 C.F.R. § 103.3(a)(3)(iv), any appeal which is filed that fails to state the reason for appeal, or is patently frivolous, will be summarily dismissed. Regulations at 8 C.F.R. § 103.3(a)(1)(v) state, in pertinent part:

An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

¹ 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). 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.

Upon review, the AAO concurs with the director's decision and affirms the denial of the application. A review of the decision reveals the director accurately set forth a legitimate basis for denial of the application. However, it is noted that the director incorrectly applied the regulation at 8 C.F.R. § 103.2(b) in evaluating the instant application and supporting evidence. Nevertheless, the district director's actions must be considered harmless as the AAO conducts a de novo review, evaluating the sufficiency of the evidence in the record in according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(d)(6).

While the applicant has submitted additional evidence on appeal to establish that the individual who provided an affidavit on her behalf was residing in the United States, the applicant has not addressed the other deficiencies discussed in the director's decision. As discussed by the director, the affidavit from Mr. [REDACTED] does not meet the applicant's burden to establish by a preponderance of the evidence that she resided in the United States continuously for the duration of the requisite period. The affiant states that he met the applicant in 1977, but does not indicate where or under what circumstances he met her. The applicant was born in Mexico in 1977 and states that she first entered the United States in 1980. The affiant further states that the applicant indicated to him in or around 1980 that she tried to legalize her status through the amnesty program. It is noted that the dates of the initial legalization application program were from May 5, 1987 until May 4, 1988 and there was no such program in 1980. Furthermore, the applicant was three years old in 1980 and it is thus unlikely that she communicated this or any other information to [REDACTED] at that time. The affiant claims to be a friend of the applicant, but he does not provide any details of the events and circumstances of her residence in the United States that would lend credibility to his claim of a friendship spanning 31 years, such as details regarding where or with whom she resided during the requisite period or whether she attended school during the requisite period. As noted by the director, the affiant did not establish that he had any direct, personal knowledge of the information to which he attested.

As the affidavit from [REDACTED] was the only form of evidence submitted by the applicant, apart from her own testimony, the director properly denied the application. 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, and has submitted only one attestation concerning that period, which is not credible for the reasons discussed above.

Given the applicant's reliance upon a single affidavit with minimal probative value, the director properly concluded that she failed to establish continuous residence in an unlawful status in the United States prior to January 1, 1982 through the date she attempted to file a Form I-687 application as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M--*, *supra*.

As the applicant fails to identify an erroneous conclusion of law or statement of fact in support of the appeal, and fails to submit evidence to overcome the basis of the director's decision, the appeal must be summarily dismissed.

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