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U.S. Citizenship  
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FILE:

MSC 05-165-10600

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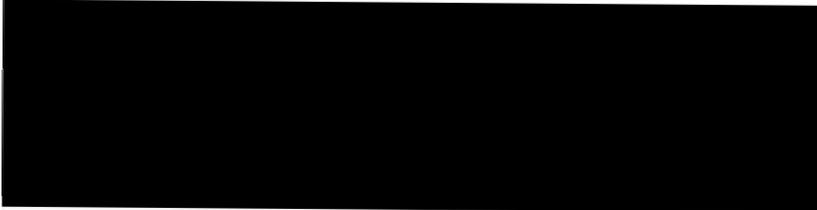
Applicant:



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

IN BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have 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, on March 14, 2005 (together comprising the I-687 Application). 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 found that the applicant had not provided sufficient evidence and that the affidavits she had submitted were not credible and were not amenable to verification, noting that an affidavit must include a current telephone number where the affiant may be contacted. 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, through counsel, claims that she did provide adequate evidence of the required residence in the United States in the form of affidavits, as per guidelines of the Department of Homeland Security, and that she “is now in the process of obtaining more evidence.” She submits copies of previously submitted affidavits, but does not submit new evidence. The applicant also correctly notes that, as required, she had provided U.S. Citizenship and Immigration Services (CIS) with the telephone numbers of the affiants, but that CIS had failed in its responsibility to get in touch with them. The AAO finds that, in this respect, the affidavits submitted previously were amenable to verification as claimed by the applicant, but that the director did not err in finding the affidavits to lack credibility or in concluding that the applicant had failed to meet her burden of proof.

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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.2(d)(6).

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 entered before 1982 and resided in the United States for the requisite period. In this case, the applicant has provided the following evidence relating to the requisite period:

- Two affidavits from [redacted] dated February 25, 2005. One states simply, "I have known [the applicant] before December 31<sup>st</sup> 1981 in New York." The second states, "I have witnessed [the applicant] having temporarily left the U.S. to travel abroad after November 6, 1986." The affidavits do not indicate any personal knowledge of where or how the applicant entered the United States or of the circumstances, dates, or places of the applicant's residence during the requisite period. There is no evidence or statement indicating that the affiant resided in the United States during the requisite period, and no details are provided of any relationship she may have had with the applicant that would lend credibility to her statements.

- An affidavit, notarized on February 22, 2006, from [REDACTED] She states that she has known the applicant for 25 years and attests to her good character. The affidavit lacks any details of the claimed 25-year relationship and fails to indicate where they met or where the applicant or the affiant resided during those 25 years. As it does not attest to where the applicant resided during the relevant time period, the affidavit has no weight as evidence of the applicant's residence in the United States during the requisite period.
- A letter "To Whom It May Concern," dated February 15, 1990, on letterhead of [REDACTED] signed by [REDACTED] "Public Information." The letter is not notarized and appears to be a prepared statement with a blank space where the applicant's name is typed in. The prepared statement refers to the applicant as "Mr." or "he," indicating that it was not prepared with the applicant, a woman, in mind. It states that "Mr. [applicant's name inserted] Muslim Community [sic] and he has been here since September 1981. He attends Friday, Jumah Prayer Services and other[s]." The statement is not consistent with information provided by the applicant on her I-687 Application, where, at Part 31, which requests the applicant to list all affiliations or associations, she failed to list any affiliations. Moreover, the letter fails to indicate where the applicant resided during her time as a member, fails to establish how the author knows the applicant; and fails to establish the origin of the information provided, contrary to regulatory requirements found at 8 C.F.R. § 245a.2(d)(3)(v). Given these failings and contradictions, the letter has no weight as evidence of the applicant's residence in the United States during the requisite period.

For the reasons noted above, the documents submitted in support of the applicant's claim can be afforded minimal or no probative value. Neither of the two affiants indicate that they met the applicant as a child, yet the record indicates that the applicant would have been twelve years old in 1981 at the time they claimed to have met her. Neither affiant claims personal knowledge of the applicant's entry to the United States or provides any details regarding how the applicant lived and survived as a child in New York or how the affiant's met the applicant. The three affidavits are bereft of sufficient detail to be found credible or probative and do not indicate **that the applicant or the affiants resided in the United States during the requisite period.** The letter from [REDACTED] is not credible for the reasons noted.

The remaining evidence in the record is comprised of the I-687 Application and the applicant's statements, in which she claims to have entered the United States in June 1981. She stated at her CIS interview on February 28, 2006 that she entered the United States from Canada with her brother, who later left her "with 3 or 4 girls" and returned to Canada. She said she stayed at a hotel on [REDACTED] and on her I-687 Application she lists her first address in the United States as [REDACTED] from January 1982 to February 1990. As noted above, to meet her burden of proof, the applicant must provide evidence of eligibility apart from her own testimony. In this case, her assertions are not supported by any credible evidence in the record.

Although the applicant claims to have resided in the United States since she was twelve years old, she provided neither school records nor medical records nor an explanation of why they were unavailable. She also failed to provide any evidence from or about any responsible adult to indicate the circumstances

of her travel to New York as a child or how she survived in New York during her childhood and throughout the requisite period.

The absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the 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 credible supporting documentation and the inconsistencies noted in the record, it is concluded that the applicant 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.