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U.S. Citizenship
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FILE: [REDACTED]
MSC 05 223 10518

Office: LOS ANGELES

Date: JUL 01 2008

IN RE: [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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter 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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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, or *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, Los Angeles, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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 to U.S. Citizenship and Immigration Services (CIS). 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.

The applicant represents herself on appeal. The applicant asserts that she has provided sufficient documentary evidence to establish continuous, unlawful residence in the United States for 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). 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 submitted evidence is relevant, probative and credible.

On May 11, 2005, the applicant filed her I-687 Application. The applicant states therein that she was born on July 28, 1966, and that she entered the United States in February of 1981 with her parents. The applicant would have been approximately 15 years old. She also claims on her application that she resided at [REDACTED] Los Angeles, until January of 1989. The applicant lists her parents as [REDACTED] and [REDACTED]. The record includes the following documents in support of her claim of residence in the United States during the requisite period:

1. a photocopy of a 1981 federal income tax return (Form 1040A) for Juan Bautista and Isadora Cortes indicating that they lived at that time at [REDACTED] Los Angeles. The tax return identifies one dependent child, [REDACTED].
2. a photocopy of a W-2 Wage and Tax Statement for 1981 for the applicant's father, [REDACTED] also listed as residing at [REDACTED] Los Angeles.
3. a photocopy of a W-2 Wage and Tax Statement for 1981 for the applicant in the amount of \$504.29. She is identified as having been employed at AZT Sewing Inc., located at 5804 East Slauson Avenue, Commerce, CA. The applicant is also listed therein as residing at [REDACTED], Los Angeles.
4. a photocopy of a corrected statement from the Social Security Administration indicating that

the applicant was employed by AZT Sewing, Inc., in 1981 and 1982 and received earnings in the amount of \$504.29 and \$729.11.

These documents are consistent with the applicant's claims that she entered the United States before January, 1982. Furthermore, the corrected statement from the Social Security Administration indicates that the applicant was employed by Interstate Hotels, LLC, from 1983 to 1988. This evidence confirms the applicant's statement on her Form I-687 that she was employed by Interstate Hotels, LLC, from September of 1983 to November of 1988.

The applicant was interviewed by a Citizenship and Immigration Services (CIS) officer on February 7, 2006. The notes of the interview reveal that the applicant stated that she first entered the United States in February, 1981 with her parents by car and that she lived on 29th Street, Los Angeles, for about nine years. She also stated that she departed the United States in December of 1987 to visit family in Mexico and returned in January of 1988. The applicant also stated at her interview that she attempted to file an application for legalization but was "front-desked."

The AAO notes that the record before us also contains an earlier application for legalization (Form I-687) signed by the applicant on January 15, 1988. This evidence confirms the applicant's claim that she attempted to file an application for legalization but was turned away. It appears that the applicant was informed that she did not qualify for legalization at that time because she stated on this earlier application that she departed the United States for Mexico on December 10, 1987 and returned without inspection on January 5, 1988. The AAO notes that this absence from the United States does not disqualify the applicant for legalization under the terms of the settlement agreements because her departure during the required period of physical presence was brief, casual, and innocent.

At the conclusion of her interview on February 7, 2006, the applicant was directed to submit additional documentary evidence confirming her residence and employment during the statutory period. In response, the applicant submitted the corrected Social Security earnings statement listed above, dated February 21, 2006.

The applicant also submitted a "corroborative affidavit" from _____ wherein Ms. _____ states that "she followed [the applicant] to Mexico on 12-10-87 but didn't go in with her." Inasmuch as this statement does not identify the affiant and provides no specific factual details that are amenable to verification, it has no probative value and therefore will be accorded no weight.

On July 22, 2006, the director issued a decision denying the application for temporary residence. In the denial, the director concluded that the applicant had failed to submit sufficient evidence to establish her continuous, unlawful residence in the United States during the requisite period.

The contemporaneous documents submitted by the applicant appear to be credible. The 1981 federal income tax return submitted on behalf of the applicant's parents identifies her as a dependent child for that year. This is consistent with the applicant's age on the date of her initial entry in February of 1981. The address provided on the income tax return and the W-2 statement for the applicant's father coincides with the address listed on both the earlier application for legalization dated January 15, 1988 and the Form I-687 submitted most recently by the applicant on

May 11, 2005. Furthermore, the applicant's W-2 wage and tax statement for 1981 reflect that she entered the United States prior to January, 1982 and the corrected Social Security earnings statement confirm her residence during the requisite period. The applicant's declaration and testimony have been consistent with the information in the documentary evidence of record.

The director has not established that the information on the many supporting documents in the record was inconsistent with the applicant's testimony or with the claims made on her I-687 Application; that any inconsistencies exist *within* the claims made on the supporting documents; or that the documents contain false information. As stated in *Matter of E-M-*, 20 I&N Dec. at 80, when something is to be established by a preponderance of the evidence, the proof submitted by the applicant has to establish only that the asserted claim is probably true. That decision also states that, under the preponderance of evidence standard, an application may be granted even though some doubt remains regarding the evidence. *Id.* at 79. The documents that have been furnished in this case may be accorded substantial evidentiary weight and are sufficient to meet the applicant's burden of proof of residence in the United States for the requisite period.

The applicant has established by a preponderance of the evidence that she entered the United States before January 1, 1982 and maintained continuous, unlawful residence for the duration of the requisite period. Consequently, the applicant has overcome the particular basis of denial cited by the director.

The appeal will be sustained. The director shall continue the adjudication of the application for temporary resident status.

ORDER: The appeal is sustained.