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U.S. Citizenship
and Immigration
Services

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FILE:

MSC 05 328 10257

Office: NEW ORLEANS (LOUISVILLE)

Date: JUL 10 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:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

A handwritten signature in black ink, appearing to read "Robert P. 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, 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 Orleans. 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 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 asserts that she has established her unlawful residence for the requisite time period, that she is qualified under Section 245A of the Act and the CSS/Newman Settlement Agreements, and that her application for temporary resident status should be granted.

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 245(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.

The Form I-687 indicates the following: that the applicant resided in the United States from 1981 till the date the Form I-687 was signed by the applicant (August 22, 2005); that the applicant was first employed in the United States (self-employed) in 1993; and that the applicant was absent from the United States from October of 2000 until February of 2001, and from February of 1997 until May of 1997 due to family issues.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that she resided in the United States for the duration of the requisite period. Here, the applicant submitted the following documentary evidence:

Affidavits

- submitted two affidavits on behalf of the applicant. The first is sworn notarized affidavit dated December 15, 2005, which states that the affiant has personal knowledge, through the affiant’s association with the applicant’s father, that the applicant resided in the United States at the following addresses: [REDACTED]; and [REDACTED]. This affidavit does not state how long the affiant has known the applicant, and provides no additional information. The second affidavit from [REDACTED] is an unsworn notarized statement dated November 28, 2005. In that affidavit, [REDACTED] states that she has known the applicant since 1988, and that the applicant came to the United States with her father as a child to avoid circumcision in the applicant’s native country of Senegal. The affidavit provides no additional information.

- [REDACTED] states in a sworn affidavit that she met the applicant with the applicant's father in New York in 1982. The affiant further states that she has personal knowledge that the applicant resided at the following addresses: [REDACTED] and [REDACTED]. The affidavit provides no additional information.

Other Evidence Submitted

- **A single retail receipt**

The applicant submitted a photocopy of a receipt from L.Z. International, Inc. an individual named [REDACTED] dated June 20, 1982. The address noted on the receipt is [REDACTED], the address the applicant lists as her residence on the Form I-687 from 1981 until 1996.

- **The unsworn statement of the applicant dated November 28, 2005**

The applicant's statement is neither sworn nor notarized, and states that the applicant came to the United States from Senegal to avoid circumcision. The applicant states that she arrived in the United States in 1981, and that she has since traveled to Senegal in 1996, 1997, and 2000.

- **Interview Notes**

The record of proceeding contains hand written interview notes from an interview before an immigration officer on June 12, 2006. The notes reflect that the applicant stated that she arrived in the United States in 1981 with her father, when she was six years old. She has no proof of entry and no recollection of the month of entry or how she entered the United States. The applicant states that she first traveled outside the United States in 1996, and returned with a passport and visa.

Although the applicant has submitted affidavits, her unsworn statement and a copy of a merchandise receipt in support of her application, the applicant has not provided any other evidence of residence in the United States during the duration of the requisite period. The only documentation submitted other than the applicant's unsworn statement and three affidavits, is a photocopy of a merchandise receipt dated June 20, 1982, and issued to an individual named [REDACTED]. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. None of the affiants provided detailed evidence establishing how they knew the applicant, the details of their association or relationship, or detailed accounts of their ongoing association establishing a relationship under which the affiant could be reasonably expected to have personal knowledge of the applicant's residence, activities and whereabouts during the requisite period covered by the applicant's Form I-687. To be considered probative and relative, affidavits and related proof must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. The proof must be presented in sufficient detail to establish that a relationship does in fact exist, how the relationship was established and sustained, and that the

affiant does, by virtue of that relationship, have knowledge of facts alleged. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of her claim. The applicant did not submit medical records; school records; real estate/lease documentation; telephone bills; dated purchase receipts; or bank statements. 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 applicant's reliance upon documents with minimal probative value, it is concluded that the affidavits submitted fail to establish continuous residence in an unlawful status in the United States during the requisite period.

Therefore, based upon the foregoing, 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.