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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE:

MSC 05 356 10969

Office: BOSTON

Date: **JUL 23 2008**

IN RE:

Applicant: [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:

[Redacted]

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.

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, Boston, Massachusetts. 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 September 21, 2005. The applicant was interviewed on October 23, 2006 in connection with her Form I-687. The director denied the application on December 14, 2006 because the applicant failed to establish that she entered the United States prior to January 1, 1982 and resided continuously in the United States unlawfully for the requisite period. On appeal, counsel for the applicant asserts that the applicant submitted credible affidavits and that the CSS/Lulac Settlement Agreement did not require the elements listed by Citizenship and Immigration Services (CIS).

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 applicant attempted to file the application. 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 or attempting to file the application. 8 C.F.R. § 245a.2(b)(1).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "until the date of filing" shall mean 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 periods, 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.* 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. *See* 8 C.F.R. § 245a.2(d)(6).

Even if the director has some doubt as to the truth, if the applicant 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 establish her entry into the United States prior to January 1, 1982 and continuous unlawful residence since such date through the date she attempted to file the application.

On the Form I-687, the applicant indicated her last entry into the United States was on February 18, 1981. The applicant listed her address for the pertinent time period as: [REDACTED] Boston, Massachusetts from February 1981 to June 2000. The applicant indicates that she was self-employed as a hairdresser from March 1981 to November 1998. The applicant lists her only absence from the United States in the pertinent time period as in January 1987 to visit Canada.

The record includes the following documentation in support of the application as it pertains to the requisite time period:

- The applicant's undated statement wherein the applicant indicates: that she entered the United States on February 18, 1981 through Los Angeles, without inspection; that she left the United States on January 8, 1987 to visit friends in Canada and returned to the United States later that month.
- A September 15, 2006 letter signed by the manager of the DADA Hair Studio confirming the applicant's employment as a hairstylist.
- An October 18, 2006 affidavit signed by [REDACTED] who declares that he knows the applicant as a friend and that the applicant was physically present in the United States on February 18, 1981.

The record also includes an FBI identification record showing that the applicant was arrested on July 4, 1999 and charged with shoplifting.

On December 14, 2006, the director determined that the applicant did not continuously reside in an unlawful status in the United States for the entire requisite time period.

On appeal, counsel for the applicant asserts: the district director improperly denied the application, that the applicant submitted two affidavits as proof of her continuous residence in the United States and an affidavit that she had signed; that the applicant does not have other documents in her name because of her undocumented status; and that counsel sincerely believes that the information submitted is adequate to establish eligibility for this benefit.

The AAO has reviewed the affidavit, the letter, and the applicant's statement and finds these documents are insufficient to establish the applicant's entry into the United States prior to January 1, 1982 and continuous unlawful residence for the requisite time period. The affidavit signed by [REDACTED] does not provide sufficient detail regarding how the affiant first met the applicant and how the affiant knew the applicant resided in the United States on February 18, 1981. In addition, the affiant does not provide information of the circumstances and events surrounding any subsequent interactions with the applicant. The affiant states only that he knew the applicant was in the United States on a particular day. This affidavit is not probative as the affidavit does not include information or evidence of the applicant's continuous residence in the United States and does not provide sufficient detail to substantiate the applicant's claim. The general nature of the information that characterizes this document lacks sufficient indicia to establish the reliability of its assertions.

The September 15, 2006 letter submitted by the manager of the DADA Hair Studio does not indicate when the applicant first started working for the company. In addition, pursuant to 8 C.F.R. § 245a.2(d)(3)(i), letters from employers must contain a declaration that the information was taken from company records, identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable. Moreover, the applicant's Form I-687 indicates that she was self-employed from March 1981 to November 1998; thus the record suggests that the submitted letter includes a time period sometime after the requisite time period. This letter does not aid in establishing the applicant's continuous unlawful residence for the requisite time period.

The AAO has further reviewed the applicant's statement regarding her residence in the United States. The applicant's statement is not supported by details or factual circumstances that might lend credibility to the statement. The deficient affidavits and the applicant own statement comprise the only evidence of the applicant's residence in the United States from prior to January 1, 1982 through the requisite time period. The applicant's statement and the affidavits lack credibility and probative value for the reasons noted. The absence of credible and 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 credible supporting documentation, 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. The appeal will be dismissed.

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