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

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FILE:

MSC 05 200 11184

Office: NEW YORK

Date: **JUL 24 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 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. 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 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:

EMPLOYMENT LETTER/AFFIDAVIT

- The applicant submitted an affidavit from _____ Director of ISN VARIETY STORE, INC., which states that the applicant worked at that facility as a helper from January of 1991 until August of 2002, earning \$5.00 per hour. The affiant states that the applicant was paid in cash since she was an undocumented alien. The affidavit, however, is not relevant to these proceedings as the employment referenced occurred after the requisite period.

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant’s employment must: provide the applicant’s address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant’s duties; declare whether the information was taken from company records; and 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.

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) also provides that letters from employers should be on employer letterhead stationery. The letter/affidavit of employment provided by the applicant is a photocopy, and is not on original company letterhead stationery. In addition, while the affidavit provided the applicant’s current address of residence, it failed to provide the applicant’s address at

the time of employment as required under 8 C.F.R. § 245a.2(d)(3)(i). Under the same regulation, the affiant also failed to declare whether the information was taken from company records, and 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. The employment letter/affidavit submitted by the applicant is of little probative value as it does not comply with the above-cited regulations, and shall, therefore, be afforded little weight.

Affidavits

- [REDACTED]

Each of these affidavits appears on the same preprinted form, and contains similar information. The affidavits provide identification, and the telephone numbers and addresses of the affiants. Each states that the affiant has known the applicant since November of 1981.

[REDACTED] states in a notarized, but undated, affidavit that he and the applicant are very good friends, that he first met the applicant at [REDACTED], Dallas, TX, and that the applicant lived with him at that address from November of 1981 until December of 1988. The affiant further states that the applicant traveled to her country on a short trip in 1987, and that the affiant knows that the applicant was in the United States in 1986, 1987, and 1988.

The applicant also provides a copy of a second notarized, but undated, statement wherein this affiant states that the applicant is the affiant's sister, and that she lived with the affiant at [REDACTED], Dallas, TX from August of 1981 until December of 1988.

The two notarized statements from [REDACTED] are patently inconsistent. One states that he is the friend of the applicant, and lived with her in Dallas, TX from November of 1981 until December of 1988. The second notarized, but undated, statement indicates that the affiant and applicant are brother and sister, and that the applicant lived with the affiant in Dallas, TX from August of 1981 until December of 1988. The applicant states on her Form I-687 and in her sworn statement, that she first arrived in the United States in November of 1981. The Form I-687 further states that from November of 1981 until April of 1994, the applicant resided in New York. The applicant never claims a Texas residence on the Form I-687. These inconsistencies are material to the applicant's claim in that the affidavits are submitted to establish the relationship between the applicant and affiant, and the applicant's residence in the United States during the requisite period. The applicant offers no explanation for the discrepancies. The evidence provided by the applicant, therefore, is not deemed credible and shall be afforded little weight. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the

remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

states in his affidavit of March 30, 2006, that he has known the applicant since November of 1981, and that he met her in New York when she came to see his (the affiant's) tenant. The affiant states that he and the applicant are very good friends and that the applicant has continuously resided in the United States from January of 1982 through May 4, 1988.

states in his affidavit of April 3, 2006, that he has known the applicant since November of 1981, and that he met her at the house of a friend in Elmhurst, New York. The affiant states that he and the applicant are very good friends and that the applicant has continuously resided in the United States from January of 1982 through May 4, 1988.

ADDITIONAL AFFIDAVITS

- The applicant submitted a copy of a June 13, 2004 sworn statement from . While the affidavit is signed and sworn to before a notary public by the heading of the affidavit list the name and address of another affiant submitting a sworn statement in these proceedings (). The affidavit states that the affiant has known the applicant since 1981, and that the applicant had on occasion worked for the affiant. The affiant further states that the applicant entered the United States before January 1, 1982, and that the applicant has been continuously present in the United States since that time except for brief, casual and innocent departures. The affiant also states that the applicant's legalization application was not accepted for filing by the service because the applicant had traveled outside the United States without advance parole, and that these facts are personally known to the affiant. The affiant does not specify the basis of his personal knowledge.
- The applicant submitted a copy of a March 27, 2005 sworn statement from . The affidavit states that the affiant has known the applicant since January of 1981, and that the two met at an unnamed restaurant where the applicant worked as a kitchen helper. The affiant then lists four New York addresses where the applicant has resided since 1981, stating that the affiant has personal knowledge of these addresses. The basis of the affiant's personal knowledge is not described. The affiant further states that he spoke with the applicant by telephone about her efforts in the legalization process.
- The applicant submitted a copy of an unsworn notarized statement from Manger of Jubilee Travel, Ltd. Mr. states that he has known the applicant since January of 1981, that the applicant entered the United States before January 1, 1982, and that the applicant has been residing continuously in the United States in an unlawful status since that time. The affiant asserts personal knowledge but provides no factual basis for his statement other than a friendly association with the applicant. The

affiant states that the applicant's legalization application was rejected by INS because the applicant had traveled outside the country without INS permission.

- [REDACTED] - The applicant submitted a copy of an unsworn notarized statement from [REDACTED], a travel consultant for World Wide Travels. Mr. [REDACTED] states that the applicant is well known to him since December of 1981 as she visited his office. The affiant states that the applicant entered the United States prior to January 1, 1982, and that the applicant has been residing here continuously since that time, except for a short absence. The affiant states that the applicant attempted to file a legalization application between May of 1987 and May of 1988, but that she was turned away by INS because of her brief absence from the United States. The affiant does not provide a detailed factual basis for the extent of his claimed knowledge of the applicant's whereabouts for the requisite period.
- [REDACTED] - The applicant submitted a copy of a sworn statement from Nesar Ahmed, who claims to be a naturalized citizen residing in Woodside, NY. The affiant states that he has known the applicant since 1981, and that she entered the United States before January 1, 1982. Mr. [REDACTED] states that the applicant has lived in this country continuously in an unlawful status since that time, except for a brief absence, and that her legalization application was rejected by INS because of the applicant's brief absence from this country without INS permission. The affiant does not provide a factual basis for the extent of his claimed knowledge of the applicant's whereabouts for the requisite period.
- [REDACTED] - The applicant submitted a copy of a sworn statement from [REDACTED]. Ms. [REDACTED] states that she is a United States citizen, that she has known the applicant since 1981, that she met the applicant at a social function in New York, and that she has seen the applicant on a monthly basis as a friend. The affiant states that on September 14, 1987, she went with the applicant to the legalization office to file a legalization application, but that the application was rejected by INS because the applicant had been absent from the United States for a brief period of time without permission.
- [REDACTED] - The applicant submitted a copy of an unsworn notarized statement from M [REDACTED]. Mr. [REDACTED] states that he is a distant relative of the applicant, that the applicant entered the United States before January 1, 1982, and that she has been living in the United States unlawfully since that time, except for a brief absence from the country. The affiant states that on September 14, 1987, he accompanied the applicant to an INS office to file her legalization application, but the application was rejected by INS officials because the applicant had been absent from the United States for a brief period of time without permission.
- [REDACTED] - The applicant submitted a copy of an unsworn notarized statement from [REDACTED]. Mr. [REDACTED] states that the applicant has been known to him since December of 1981, that the applicant entered the United States

prior to January 1, 1982, and that she has been continuously physically present in the United States in an unlawful status since that time, except for a short absence. The affiant further states that the applicant attempted to apply for legalization during the amnesty period, but was turned away because of travel outside the country without advance parole, that he traveled with the affiant to the legalization office, and that the applicant made repeated attempts to apply for legalization without success. The affiant states that he has personal knowledge of the affiant's legalization efforts. The affiant does not, however, provide detailed information establishing the basis of his knowledge for the length of the affiant's residence in the United States.

Although the applicant has submitted numerous affidavits in support of her application, the applicant has not provided any contemporaneous evidence of residence in the United States for the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. Although not required, none of the affidavits included any supporting documentation of the affiant's presence in the United States during the requisite period. 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 applicant 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 credible, 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 his 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 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.

- APPLICANT'S SWORN AFFIDAVIT

The applicant issued a sworn statement on April 12, 2005 in support of her application for legalization. She states that she originally entered the United States on November 19, 1981 without a visa. She states that she remained in the United States continuously in an unlawful manner since then with the exception of a short innocent absence. The affiant states that she left the United States on May 26, 1987 for Bangladesh to visit her family on "an urgent basis," and reentered the United States on July 17, 1987 without a visa or inspection. The affiant further states that although she departed the United States, she was never out of the country for more than 45 days.

The applicant has provided contradictory information concerning her United States entry and departure dates. In the above referenced sworn affidavit, the affiant clearly states that she left the United States on May 26, 1987, and returned on July 17, 1987 (an absence of 51 days), and that at no time was she ever out of the country for more than 45 days. In the applicant's response to the director's Notice of Intent To Deny (NOID) dated April 5, 2006, the applicant states that in her interview on March 7, 2006, she was very nervous and confused. She then states in her response to the NOID that she entered the United States on November 19, 1981 as a visitor (implying a documented entry), but that she lost that passport and evidence of her entry. The applicant then states that she went to Bangladesh on June 26, 1987 to visit her parents and returned to the United States on September 12, 1987 (78 day absence from the country) with a visitor's visa. The contradictory information concerning the applicant's entry and exit information, and the circumstances surrounding her manner of entry and exit (with or without inspection, documented or undocumented), has not been sufficiently explained by the applicant. Further, the contradictory information is material to the substance of her claim in that it directly bears on whether she has established her claim of continuous residence in this country for the requisite period. The evidence provided by the applicant, therefore, is not deemed credible and shall be afforded little weight. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Additional Evidence Submitted

- The applicant submitted a copy of her passport issued on July 17, 1987 in Bangladesh.
- The applicant submitted a copy of a Mutual of Omaha insurance identification card. The applicant typed on the photocopy "October 1987." The AAO notes that no date appears on the card and that the card bears a Dallas, TX address, which does not appear on the Form I-687.
- The applicant submitted a copy of a money order receipt dated September 14, 1987, referencing an I-687.

The applicant submitted a copy of an unsworn statement from [REDACTED], M.D., which states that Dr. [REDACTED] first examined the applicant on February 23, 1982. The statement is a photocopy and is not accompanied by copies of the applicant's medical records establishing the claimed treatment.

- The applicant submitted a copy of an unsworn statement from [REDACTED] M.D., which states that Dr. [REDACTED] saw the applicant on February 24, 1986. The statement is a photocopy

and not accompanied by copies of the applicant's medical records establishing the claimed treatment.

A photocopy of a mailing envelope postmarked October 24, 1982 and addressed to the applicant at _____ Dallas, TX. The applicant does not claim, on the Form I-687, to have ever resided in Texas.

- A photocopy of a mailing envelope addressed to the applicant at _____ in Dallas, TX. The applicant states that the envelope was mailed in October of 1985, but the postmark on the envelope is not legible. The applicant does not claim, on the Form I-687, to have ever resided in Texas.

The additional evidence submitted and listed above does not establish the applicant's presence in the United States for the requisite time period. Taken as a whole, the evidence submitted lacks sufficient detail to establish the applicant's presence in this country for the requisite time period. 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. 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, and the contradictory evidence provided by the applicant in support of her claim, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States during the requisite period.

Further, the applicant admits in her response to the director's Notice of Intent to Deny that she was absent from the United States from June 26, 1987 until September 12, 1987, a period of 78 days. The regulation at 8 C.F.R. § 245a.2(6)(h)(i) states as follows:

- (h) *Continuous residence.* (1) For the purpose of this Act, an applicant for *temporary resident status* shall be regarded as having resided continuously in the United States if, at the time of filing of the application:
 - (i) No single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982 through the date the application for temporary resident status is filed, unless the alien can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed;

....

In view of the above regulation, the applicant has also failed to establish continuous residence during the requisite period because her 1987 absence from the United States exceeded, by her own

admission, 45 days. The record does not establish that the applicant's return to the United States within the time permitted for "continuous residence" absences could not be accomplished due to emergent reasons. Although the term "emergent reasons" is not defined by regulation, *Matter of C-*, 19 I. & N. Dec. 808 (Comm. 1988), holds that emergent means "coming unexpectedly into being." The applicant states that she was required to be out of the country due to her father's illness. The applicant has, however, provided no medical records or other documentation establishing the illness of her father, or the nature of any such illness. The applicant has provided no evidence of "emergent reasons" causing her prolonged absence from the United States. The record does not establish that the absence was caused by an event which came "unexpectedly into being."

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.