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U.S. Citizenship  
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FILE:

MSC-05-343-11998

Office: NEW YORK

Date: JUL 29 2008

IN RE:

Applicant:



APPLICATION:

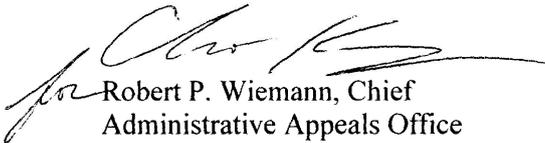
Application for Status as a Temporary Resident pursuant to Section 245A of the  
Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

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, your file has 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 if your case was 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, 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.

The applicant represents herself on appeal. The applicant stated that she has resided continuously in the United States for the requisite period of time. The applicant claims that the affidavits she submitted were sufficient to establish that she meets the requirements for status as a temporary resident pursuant to the terms of the settlement agreements.

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).

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) 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. See 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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet her burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on September 8, 2005. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant listed the following addresses during the requisite period: [REDACTED] 981 to December 1986; [REDACTED] Jersey from January 1987 to June 1994; [REDACTED] June 1994 to the present. At part #33 where applicants were asked to list all employment in the United States since entry, the applicant listed the following positions: Self-employed hair braider at various locations in New York City and New Jersey from December 1984 to the present.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted a sworn statement from [REDACTED] dated November 25, 2005. The affiant states therein that she knows the applicant to “be a person of good moral standard,” and that she has known her since “the late 1981.” The applicant also submitted a sworn statement from

states therein that he has “known [redacted] since late 1981 and we do talk from time to time.” No other documentary evidence was submitted in support of the applicant’s request for temporary residence status.

The applicant was interviewed by a Citizenship and Immigration Services (CIS) officer on April 11, 2006. The applicant stated that she initially entered the United States in December, 1981 with her grandmother, at the age of 14. The applicant claimed that she lost her original passport, that she did not attend school at any time in the United States, and that she worked with her grandmother braiding hair. Aside from the two affidavits submitted by [redacted] the applicant did not offer any medical or hospital records, utility bills, rent receipts, or any other contemporaneous documentary evidence of her initial entry or subsequent residence in the United States.

On April 13, 2006, the district director issued a Notice of Intent to Deny (NOID) explaining that the applicant had failed to submit any relevant, probative, or credible documentation beyond her own assertions that she met the requirements for eligibility pursuant to the terms of the settlement agreements. The district director observed that the two affidavits submitted by the applicant were not amenable to verification, lacked factual specificity, and thus failed to overcome the unavailability of both primary and secondary evidence. The applicant was granted 30 days to submit additional documentation, and was informed that a failure to respond to the NOID would result in the denial of her application.

In denying the application the director noted that the applicant did not respond to the NOID within the 30 day time period. However, on June 9, 2006, the applicant submitted a letter reaffirming that she met the entry and residence requirements for eligibility as a temporary resident pursuant to the settlement agreements.

The AAO notes the paucity of evidence in the record before us. Other than her own assertions, the applicant submitted attestations from two individuals concerning the relevant period of time. Neither statement is credible, as neither affiant explains with any specificity where they first met the applicant, how they date their acquaintance with her, how they have direct, personal knowledge of the addresses at which the applicant resided, or the circumstances surrounding when she entered the United States or how she survived from age 14 to the present. The lack of detail regarding the events and circumstances of the applicant's residence is significant given the declarants’ claim to have known the applicant since she was 14 years old. For these reasons, the declarations noted above have very limited probative value as evidence of the applicant’s continuous residence in the United States since a date prior to January 1, 1982.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the requisite period, and has submitted attestations from only two people concerning that period. Neither affidavit is credible, probative, or amenable to verification, and consequently, does not overcome the absence of any primary or secondary evidence of entry and residence.

The absence of sufficiently detailed supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of this 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 absence of any primary or secondary documentary evidence and her reliance upon documents with minimal probative value, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States for the requisite period 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.