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FILE: [Redacted]
MSC-06-046-14359

Office: NEW ORLEANS

Date: JUN 05 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: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case 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.

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 director denied the application because she found the evidence submitted with the application was insufficient to establish eligibility for Temporary Resident Status pursuant to the terms of the CSS/Newman settlement agreements. Specifically, the applicant stated in her interview with a Citizenship and Immigration Services (CIS) officer that she first entered the United States in 1988. In addition, where the I-687 application asks for “*all of your residences in the United States since your first entry, beginning with your present address,*” the applicant only listed addresses going back to 1988.

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).

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).

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 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, 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 has not met her burden of proof.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on November 15, 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 first period of residence the applicant listed began in 1988. In addition, the applicant testified under oath before an immigration officer that she first entered the United States in 1988. This casts doubt on the applicant's claim to have resided in the United States throughout the requisite period, and tends to show she entered the United States for the first time in 1988.

On appeal, the applicant states that she has been in the United States "since 1982." As stated above, an applicant for temporary resident status must establish entry into the United States *before* January 1, 1982.

The applicant has also provided the following documentation in support of her appeal:

- Copy of employment authorization card and social security card.
- Sworn statement of [REDACTED] which states that he has known the applicant since January 1982 and that she worked for him from January 1988 to May 1988.
- Sworn statement of [REDACTED] which states that the applicant stayed at his house in Bay City, TX from January 1988 through July 1988.
- Letter from [REDACTED] which states that she has known the applicant and her family since 1996.
- Letter from [REDACTED]s of [REDACTED]s which states that the applicant and [REDACTED] leased property from [REDACTED]s from June 1996 to July 2005.
- Letter from [REDACTED] stating that the applicant had been a customer at [REDACTED] Discount Store from approximately 1990 until 1998, when the store was closed.

The documentation provided fails to prove that the applicant resided in the United States throughout the requisite period. Only the statement from [REDACTED] addresses the period prior to 1988. However, the statement does not contain the declarant's telephone number or address, and thus cannot be verified. In addition, the declarant does not indicate under what circumstances he met the applicant, how he dates his initial acquaintance with the applicant, or how frequently he had contact with the applicant. Finally, the statement does nothing to prove that the applicant resided in the United States *before* January 1, 1982, as is required for eligibility

under Section 245A of the Act. Given these deficiencies, this statement has no probative value in supporting the applicant's claim.

The applicant failed to submit any documents to establish continuous unlawful residence in this country since prior to January 1, 1982. 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 failure to submit any supporting documentation, 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.