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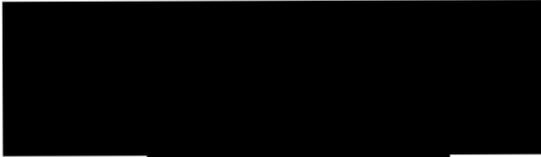
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
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Services

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FILE: [REDACTED]
MSC-06-073-11809

Office: NEW ORLEANS

Date: JUN 09 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. 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, 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. Specifically, the director stated that at the time of the applicant's interview with a Citizenship and Immigration Services (CIS) officer on November 6, 2006, the applicant stated that she first entered the United States in August 1988. The director cited Immigration and Nationality Act (Act) § 245A(a)(2)(A) which states that applicants for adjustment to Temporary Resident Status must establish that they entered the United States before January 1, 1982 and then resided continuously in the United States in an unlawful status since such date and through the date the application is filed. As this applicant's testimony did not allow her to establish her residence in the United States for the requisite period, the director denied her application.

On appeal, the applicant asserts that she is appealing the director's decision because her husband was granted Temporary Resident Status. She asserts that she and her husband applied for this status in 1986. She indicates she is submitting evidence that her husband obtained Temporary Resident Status.

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).

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. 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 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 applicant 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 a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on December 12, 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 showed her first residence in the United States to be Greenfield Ranch in Mecca, California where she resided from 1988 until 1994. Here, the applicant did not indicate which month in 1988 she began residing at this ranch. At part #32 where the applicant was asked to list all of her absences from the United States, she indicated that she had no absences during or after the requisite period. At part #33, where the applicant

was asked to list all of her employment in the United States since she first entered, she showed that this section was not applicable.

Also in the record are the notes from the CIS officer who interviewed the applicant. Here, the officer's notes indicate that the applicant appeared to believe that she was eligible for adjustment to Temporary Resident Status because her husband had been granted this benefit. However, this officer's notes also indicate that the applicant stated that she first entered the United States in August 1988. It is noted that this is after the requisite period ended. This indicates that the applicant did not reside in the United States for any part of the requisite period.

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. 8 C.F.R. § 245a.2(d)(5). To meet his burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony. 8 C.F.R. § 245a.2(d)(6). The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that an applicant may submit to establish proof of continuous residence in the United States during the requisite period. This list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts or letters. An applicant may also submit any other relevant document pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

Here, the applicant submitted a letter from [REDACTED] attesting to her residence in the United States. However, this letter is written in Spanish and is not translated. Because the applicant failed to submit a certified translation of this letter, the AAO cannot determine whether the evidence supports the applicant's claim. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

The director denied the application on November 6, 2006. In her decision, the director stated that the applicant failed to meet her burden of establishing that she was eligible to adjust to Temporary Resident Status, as she stated that her first entry into the United States was in August 1988.

On appeal, the applicant asserts that she is eligible to adjust to Temporary Resident Status because she applied for this status at the same time as her husband in 1986. She provides proof that her husband has adjusted to Temporary Resident Status. The applicant previously stated that she did not enter the United States until 1988 as noted above.

In summary, though the applicant's husband appears to have been granted Temporary Resident Status, for this applicant to be granted that status, she bears the burden of proving that she herself resided continuously in an unlawful status in the United States from a date prior to January 1, 1982 until she or her parent or spouse attempted to tender an application for legalization to the former Immigration and Naturalization Service (INS) or to a Qualified Designated Entity (QDE)

during the original legalization period and was prevented from doing so. If an applicant was otherwise eligible and he or she continuously resided in the United States for the requisite period and if this individual also had a spouse who was turned away or prevented from filing during the original legalization period, he or she could be granted Temporary Resident Status. However, this applicant has not met her burden of establishing that she resided continuously in the United States for the requisite period. Therefore, she is not eligible to adjust to Temporary Resident Status

In this case, the applicant claims she began residing in the United States in August 1988, after the requisite period ended. 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.