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U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE: [REDACTED]  
MSC-04-304-10115

Office: NEWARK

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:

[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 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, Newark. 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 noted that the applicant testified under oath before an immigration officer that she had first entered the United States on August 18, 1986 as a B-2 non-immigrant visitor for pleasure. This testimony was supported by documentary evidence provided by the applicant, including a photocopy of an I-94 Departure record showing an entry date of August 18, 1986. 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 counsel concedes that the applicant first entered the United States on August 18, 1986. However, counsel asserts that the applicant does not need to establish that she continuously resided in the United States throughout the requisite period, because the applicant is applying as the “spouse of a principal alien.”

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. 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 meet her burden of establishing continuous unlawful residence in the United States for the duration of 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 July 30, 2004. 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 address in the United States to be in Passaic, New Jersey, from August 1986 to September 1987. Similarly, at part #33, she showed her first employment in the United States to be for Microtronics, in West Caldwell, NJ, from August 1986 to January 1989.

The applicant submitted the following documentation:

- Notarized letters from [REDACTED] and [REDACTED] stating that they have known the applicant and/or her husband since 1986 or later.
- Notarized letter from the applicant's mother, [REDACTED] in which she states that the applicant left her native country of Poland for the United States on August 18, 1986.
- Notarized letter from the applicant's father, [REDACTED] in which he states that he departed Poland with the applicant on August 18, 1986.
- Photocopies of five checks from Spencer Savings Bank which dates ranging from November 1988 through January 1989.
- Photocopies of Account Statements from Spencer Savings Bank dated October 24, 1988 and November 23, 1988.
- Letter from Spencer Savings Bank regarding a six month Certificate of Deposit (CD) with a maturation date of November 10, 1989.
- Letter from a tax preparer regarding the preparation of the applicant's 1988 tax return.
- Photocopy of the applicant's marriage certificate.
- Photocopy of applicant's church marriage certificate issued by the Holy Rosary Roman Catholic Church.
- Photocopy of the birth certificate for the applicant's child, [REDACTED]
- Photocopy of the birth certificate for the applicant's child, [REDACTED]
- Photocopy of applicant's I-94 Departure Record showing that she was admitted to the United States on August 18, 1986 as a B-2 nonimmigrant visitor for pleasure.
- Social security statement showing earnings for the applicant beginning in 1989.

In addition, the record of proceeding contains a Form I-140, Immigrant Petition for Alien Worker, filed on behalf of the applicant by St. Joseph Roman Catholic Church in 2007. To establish the applicant's qualifications as a skilled worker, the employer submitted an approved Department of Labor Form ETA 9089, Application for Permanent Employment Certification. The application states that the applicant was employed as a specialty cook at Samopomoc Cholopska Bar Uniwersalny in Skala, Poland from July 1, 1984 until August 10, 1986. The immigrant petition was also accompanied by an employer letter (with English translation) from

[REDACTED], Labor Administration Specialist, confirming the applicant's employment at "Bar Uniwersalny" from July 1, 1984 to August 10, 1986.

The director denied the application for temporary residence on November 14, 2006, finding that the applicant had failed to prove her continuous residence and physical presence in the United States throughout the requisite period. On appeal, the applicant states through counsel that she entered the U.S. on August 18, 1986 and that she is applying for temporary residence "as a spouse of the Principal Alien, her husband [REDACTED]" As stated above, an applicant for temporary resident status must establish that he or she continuously resided and was physically present in the United States in an unlawful status for the duration of the requisite period. An applicant cannot qualify for temporary resident status based on the residence and/or physical presence of a "principal alien."

The applicant has failed to submit any documents to establish that she has continuously resided in the United States in an unlawful status 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.