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U.S. Citizenship
and Immigration
Services

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FILE: [Redacted]
MSC-05-274-10941

Office: BALTIMORE

Date: JUN 12 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, Baltimore. 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 had failed to establish class membership, and that even if class membership had been established, the applicant failed to submit evidence of continuous residency during the statutory 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 argues that USCIS erred in denying the application. The applicant asserts that she has provided sufficient credible, probative evidence to meet the burden of proof.

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)(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.

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 July 1, 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 address in the United States to be in Brooklyn, New York, from 1980 to 1982, and in Washington D.C. from 1983 until 1988. She did not list any employers during the relevant time period.

The applicant submitted the following documentation:

- An employment verification from [REDACTED], who indicated that she employed the applicant as a housekeeper/babysitter from November 1988 until November 1989. This is outside of the relevant time period and therefore cannot be probative of the issue of the applicant’s continuous residency.

- A notarized letter from [REDACTED] who indicated that she lives in Kissimmee, Florida and that she is the applicant's former sister-in-law.. Ms. [REDACTED] indicated that she has known the applicant since 1981 and she provided the names of the applicant's parents and provided the applicant's addresses within the United States since 1981. She did not state with any specificity where she first met the applicant, or how she dates their initial acquaintance. The statement lacks any details that would lend credibility to an alleged 24-year relationship with the applicant; and it is not accompanied by any evidence that the applicant resided in the United States during the relevant period. Further, the declarant stated that she lived with the applicant but she did not state when or where. Given these deficiencies, this statement has minimal probative value in supporting the applicant's claim that she entered the United States in 1981 or that she continuously resided in the United States during the relevant period.
- A notarized letter from [REDACTED] who indicated that she lives in Brooklyn, New York and that the applicant is her cousin's daughter. This letter is nearly identical to the letter described above. The declarant indicated that she has known the applicant since 1980, however, she did not state that she has direct, personal knowledge that the applicant has lived in the United States during the relevant time period or that she entered the United States prior to January 1, 1982. Thus, it will be accorded minimal weight.

On May 1, 2006, the director issued a Notice of Intent to Deny (NOID) to the applicant. The director acknowledged the letters submitted by the applicant and stated that in each letter, the declarant stated that they were aware that the applicant had attempted to file a legalization application but had been turned away. The director also noted that during the interview the applicant stated that she did not attempt to file a legalization application because her mother told her that she could be arrested. The director noted this inconsistency and explained that it cast doubt on the reliability of the declarant's statements.

While the director noted that, by her own admission, the applicant failed to qualify for class membership because she had not visited an INS office or Qualified Designated Entity (QDE) and been turned away, he then went on to adjudicate the case on its merits. He noted that the affidavits submitted from [REDACTED] and [REDACTED] conflict with the applicant's testimony that she attempted to file for legalization and was turned away and therefore contain no evidentiary value. Thus, while the class membership of the applicant was questioned in the decision, the director treated the applicant like a class member and based his decision on both the applicant's failure to establish continuous residency for the requisite period and failure to establish class membership.

The director denied the application for temporary residence on September 18, 2006. In denying the application, the director found that the applicant's statement that her legal guardian, Mrs. [REDACTED] was responsible for her and attempted to file the legalization documents in 1986 is not credible. Thus, the director determined that the applicant had failed to meet her burden of proof by a preponderance of the evidence.

On appeal, the applicant claims that she did file for legalization and was turned away, though she provides no explanation of why she provided inconsistent testimony in her interview nor does she provide any additional evidence of either her initial entry into the United States or her continuous residency in the United States during the requisite period.

In summary, the applicant has not provided sufficient credible evidence of residence in the United States relating to the statutory period or of entry to the United States before January 1, 1982. Furthermore, she has provided inconsistent statements regarding whether she previously attempted to apply for legalization which is a prerequisite for class membership under the CSS/Newman Settlement Agreements.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, as well as the inconsistencies and contradictions noted in the record, seriously detract 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 inconsistencies in the record and the lack of credible supporting documentation, it is concluded that she 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.