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U.S. Citizenship
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Services

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[Redacted]

FILE:

MSC 06 090 11664

Office: NEW YORK

Date:

JUN 26 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 remanded for further action, you will be contacted.

for Michael T. Kelly
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, 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) on December 29, 2005. The applicant was interviewed on March 29, 2006. The director issued a Notice of Intent to Deny (NOID) the application on July 3, 2006. The director denied the application on August 28, 2006.

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).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "until the date of filing" shall mean 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 periods, 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.* 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 (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.

An applicant for temporary residence under the CSS/Newman Settlement Agreements need only 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 have been physically present in the United States from November 6, 1986 until the date of attempting to file the application.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to establish her entry into the United States prior to January 1, 1982 and continuous unlawful residence since such date through the date she attempted to file the application. On the Form I-687, the applicant indicates she last entered the United States on February 28 1981. The applicant lists her addresses for the pertinent time period as: [REDACTED], Flushing, New York from March 1981 to April 1984; [REDACTED] Flushing, New York from April 1984 to July 1988. The applicant indicates she was employed as a manicurist for [REDACTED] from March 1981 to March 1989. The applicant does not list any absences from the United States on the Form I-687. At her March 29, 2006 interview: the applicant indicated through a Mandarin interpreter that she visited the waterfall in Canada in 1990 but did not cross into Canada; the applicant indicated through a Korean interpreter that she was never outside the United States since her arrival in 1981.

The record contains the first page of the applicant's passport – number [REDACTED] - issued on November 19, 1996 in Jilin, China and an expiration date of November 18, 2001.

The record also contains a one-paragraph lease dated March 1, 1981 for a term of three years and three months but beginning March 1981 and ending April 29, 1981. The record does not reflect that the English copy is a translation. The record further contains an undated letter signed by [REDACTED], a "constructor" stating that he met the applicant in 1985 when he helped fix her bathroom, has known the applicant for 20 years, and still keeps in touch with her

The director denied the application on August 26, 2006. The director determined that neither the letter nor the lease submitted by the applicant were probative. Thus, the applicant had not provided credible documents or affidavits sufficient to establish that the applicant resided in the United States on or prior to January 1, 1982 for the requisite time period.

On appeal, the applicant submits an October 16, 2006 affidavit signed by [REDACTED] who declares that he has known the applicant since 1981 when she was his next door neighbor in the Flushing area. The applicant also provides a photocopy of a receipt from a lighting fixture and supply company, dated April 20, 1987 bearing the applicant's name. The record also contains two receipts from the Linden Hill, New York post office, dated March 11, 1987 and September 22, 1987. The post office receipts do not include the applicant's name. Counsel asserts these additional documents support the applicant's claim that she meets the requirements for this benefit.

The record is insufficient to establish the applicant's entry into the United States prior to January 1, 1982 and continuous unlawful presence in the United States for the requisite time period. The first page of the applicant's passport shows that the passport – number [REDACTED] - was issued on November 19, 1996 in Jilin, China. This is inconsistent with the applicant's testimony that she entered the United States in 1981 and did not leave the United States. Such an inconsistency undermines the credibility of the applicant. The copy of the lease agreement submitted contains an inconsistency on its face, by indicating it is for a period of three years and three months but also indicating that the term of the lease begins March 1981 and ends April 29, 1981. The letter and the affidavit submitted on the applicant's behalf contain vague and general information. Neither document details the events and circumstances of how the letter-writer and the affiant initially met the applicant, establishes that the letter-writer and the affiant were in the United States during the requisite time period, nor provides sufficient details of subsequent interactions with the applicant. The AAO finds the absence of detail surrounding the circumstances of the affiant's and letter-writer's relationship with the applicant detracts from the probative value of these documents. Neither of these documents is probative in establishing the applicant's entry into the United States prior to January 1, 1982 and continuous unlawful residence in the United States for the requisite time period. Similarly, the copies of the receipts submitted on appeal do not contain sufficient information to establish that the applicant entered the United States prior to January 1, 1982 and continuously and unlawfully resided in the United States for the required time period. The photocopy of the receipt from the lighting fixture and supply company is for a one-time purchase, is not subject to verification, and does not establish entry or continuous presence. Likewise, the two postal receipts which do not reflect the applicant's name do not establish the applicant's entry into the United States and continuous unlawful residence.

The information in record reveals inconsistencies in the applicant's testimony regarding her claim and the documents submitted are insufficient to establish the applicant's entrance into the United States prior to January 1, 1982 and unlawful residence in the United States for the requisite time period. The record lacks any document that might lend credibility to the applicant's claim of entry and residence in the United States for the required time period.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period and the applicant's inconsistent statements regarding her continuous residence in the United States 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 lack of credible supporting documentation and the applicant's reliance upon deficient documents, it is concluded that the applicant has

failed to meet her burden of proof and failed to establish continuous residence in an unlawful status in the United States 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. The appeal will be dismissed.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.