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U.S. Citizenship
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FILE: [REDACTED]
MSC 05 347 10958

Office: DETROIT

Date: **MAR 04 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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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, Detroit, Michigan. 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 district 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 district 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 asserts that she entered the United States prior to January of 1982 and resided unlawfully in the United States to the date she filed her Citizenship and Immigration Services (CIS) Form I-678 Application (i.e. September 12, 2005). Also, on the CIS I-694 Appeal Form, the applicant provided a chronological summary of her case.

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 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 district 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 district 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 his or 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 CIS on September 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 disclosed her first address in the United States to be in an unnamed hotel in New York, New York from August 1, 1981 to August 1, 1981. At part #33, she stated no employment experience in the United States since her entry.

According to the applicant, her last entry into the United States was on July 17, 2000. On part # 32 of the Form I-687 Application, the applicant stated that she left the United States to travel on a series of non-emergent family visits to Senegal commencing August 1981 to August 1985, then 1987 to 2002 and then again in 2002 to July 2005. On the CIS Form I-687 Application's Supplement signed and dated by the applicant on August 13, 2005, she indicated by “check-mark” in answer to Form questions numbers two and three that she resided in the United States continuously except for brief absences from before 1982 until she applied for legalization during 1987 to 1988, and that similarly she was continuously physically present in the United States from November 6, 1986 until the date when she was turned away by CIS when she tried to apply for legalization. According to applicant's recitation on part # 32 of the Form I-687 Application, she has been out of the United States from August 1981 until August 1985, four years of the requisite period. The applicant's sworn statements or acknowledgements on the Form I-687 Application's Supplement are inconsistent and

contradictory to the facts of her foreign travel found on the Form I-687 Application submitted by the applicant. There is no assertion by the applicant that the absences were necessitated for emergent reasons.

In the record of proceeding is found a "Record of Sworn Statement, Life Legalization" made by the affiant on May 4, 2006, before an immigration officer. In that statement the applicant stated that she last entered the United States on advance parole, on April 27, 2006, and that she first entered the United States in August of 1981 for one month, departed the country and then returned in October of 1982 traveling on a visitor visa. The applicant submitted a copy of her passport pages¹ providing evidence that the applicant entered the United States September 22, 1981, and then on July 31, 1982 on a nonimmigrant B-2 visitor's visa. In a sworn statement, the applicant declared that she was in the United States in August 1981 for one month and then in October 1982 until 1987.

The applicant has also provided a copy of her U.S. visa issued July 27, 2000. Copies of the applicant passport pages are in the record of proceeding. There is no legible United States entry stamps in that passport stamped before August 27, 1981. Otherwise the dates of departure and return given in the sworn statement are consistent with the information provided on the Form I-687 Application. No evidence such as airline tickets or receipts for travel costs was submitted by the applicant.

The applicant submitted the following documents: the permanent residency card of [REDACTED] a Southfield, Michigan resident, and his Chauffeur driver's operating license; two franked (cancelled postage stamp with the date illegible) envelopes addressed to the applicant in Senegal; a letter from the applicant dated December 12, 2005; approximately 36 pages from the applicant's passport; three undated and non-captioned, photos with one of the photos indiscernible; and a page of business card images.

The district director denied the application for temporary residence on May 5, 2006. The district director found that the preponderance of the evidence in the record of proceeding did not demonstrate that the applicant had 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 under this section.

In summary, the applicant has not provided any evidence that she entered the United States prior to January of 1982. The applicant has not been continuously present in the United States during the required periods according to her own sworn statements.

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 his claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on

¹ Entry stamps in the passport also demonstrated that the applicant was in France on September 3, 1978 and on July 29, 1980.

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 he 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.