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U.S. Citizenship
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Services

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FILE:

MSC 05 207 10746

Office: NEW YORK

Date: MAR 06 2008

IN RE:

Applicant:



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 "D. King".

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 on May 2, 2006 on the basis that the applicant failed to submit a response to a Notice of Intent to Deny (NOID) issued on March 6, 2006. The applicant filed a timely appeal on June 1, 2006, with evidence that her rebuttal to the NOID was in fact timely submitted. The district director re-opened the matter *sua sponte*, noting that the applicant had overcome the original grounds for denial. Nevertheless, the director denied the application on August 22, 2006. 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. The director acknowledged the affidavits submitted by the applicant in support of her application but determined that they were not credible. 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 objects to the district director's findings that the affidavits she submitted were not credible. She asserts that, contrary to the director's observations, all of her affiants were in fact in the United States throughout the relevant period. The applicant submits a written statement, but no additional evidence, in support of the appeal.

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).

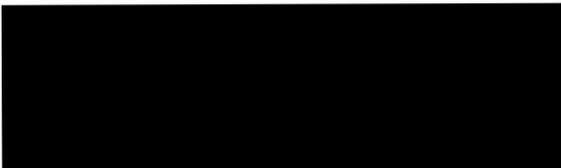
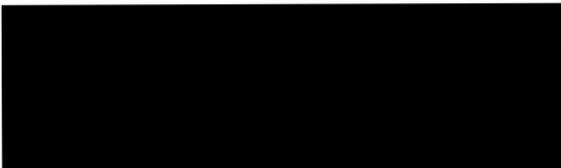
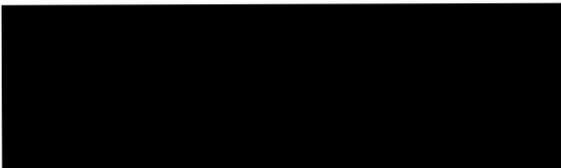
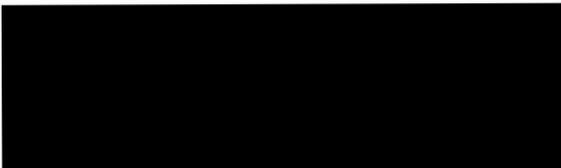
Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant 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 April 25, 2005. The applicant signed this form under penalty of perjury, certifying that the information she provided is true and correct. 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 stated that she resided at the following addresses in New York during the requisite period:

-  October 1981 to October 1982
-  October 1982 to June 1984
-  June 1984 to July 1986
-  July 1986 to December 1988

The applicant’s residence information indicates that she continuously resided in the United States during the requisite period; however the applicant has failed to corroborate this testimony with credible and probative evidence.

At part #32 of the Form I-687, where applicants were asked to list all affiliations or associations, clubs, organizations, churches, unions, businesses, etcetera, the applicant indicated that she was a member of the Tsung Sun Social Club and the World Buddhist Association, both located in New York, New York, since November 1981. At part #33 of the Form I-687, where asked to list all employment in the United States, the applicant indicated that she was employed as a clerk by [REDACTED], in Ridgewood, New York from December 1981 until October 1984; by [REDACTED], in Flushing, New York from October 1984 until February 1986; and by [REDACTED] in Brooklyn, New York from February 1986 until May 1988.

To meet her burden of proof, an applicant must provide evidence of eligibility apart from 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 may be provided 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." 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The applicant submitted the following evidence at the time she filed her application:

- An affidavit dated March 28, 2005 in which she stated that has lived continuously and unlawfully in the United States since before January 1, 1982 through 1988 and until the present. She stated that she attempted to file a completed amnesty applicant with a Qualified Designated Entity (QDE) on March 16, 1988, but that the QDE refused to accept her application because she had traveled outside the United States after November 6, 1986 and returned without permission from the Immigration and Naturalization Service (INS).
- A letter dated March 16, 1988 from Polonia Organizations League, Inc., a QDE located in New York, New York, advising the applicant that her Form I-687 application and fee were being returned to her because she traveled outside the United States and returned without INS permission.
- An interview appointment notice dated August 13, 1990 from the INS Legalization Office located in New York, New York, advising the applicant that she had an interview scheduled for September 28, 1990.
- A form letter affidavit of witness dated July 19, 2004 from [REDACTED] resident of New York, New York, who stated that she has been acquainted with the applicant in the United States, that she knows that applicant lived continuously and unlawfully in the United States from before January 1, 1982 until March 16, 1988, at which time she attempted to file a legalization application, and that the applicant attempted to apply for a work permit under her CSS case in 1990.

- A form letter affidavit of witness dated August 9, 2004 from [REDACTED] a resident of Flushing, New York. This affidavit is identical in content to the affidavit from [REDACTED]
- A form letter affidavit of witness dated July 19, 2004 from [REDACTED] a resident of Flushing, New York. This affidavit is identical in content to the affidavits from [REDACTED] and [REDACTED]

While the letter from the QDE is acceptable evidence that the applicant was in fact present in the United States in March 1988, the applicant did not provide credible, probative evidence of her entry to the United States prior to January 1, 1982 or her continuous residence in the United States from entry until March 1988. The affidavits of [REDACTED] and [REDACTED] are uniformly lacking in probative value. None of the affiants specified when, where or how they first met the applicant, what their relationship is with the applicant, or how frequently they had contact with her during the requisite period. They simply stated that they "know" she was residing in the United States during the requisite period, but provide no details of the events and circumstances of the applicant's residence in the United States that would suggest that they have direct, personal knowledge of the events to which they are attesting. None of the affiants provided relevant, verifiable testimony, such as information regarding where the applicant was living or working during the requisite period. In addition, none of the affiants provided a contact telephone number, thus their statements are not readily amenable to verification. Although not required to do so, it is noted that none of the affiants provided proof of their identity, or evidence that they were residing in the United States during the relevant period. Because of these affidavits are significantly lacking in detail and are not amenable to verification, they have minimal probative value as corroborating evidence.

The applicant had an interview with a CIS officer in connection with her application on February 28, 2006. On March 6, 2006, the director issued a Notice of Intent to Deny, advising the applicant that the three affidavits she submitted were **neither credible nor amenable to verification. The director noted that there was no evidence that the affiants, [REDACTED] and [REDACTED], had direct, personal knowledge of the events and circumstances of the applicant's residence. The director afforded the applicant 30 days in which to submit additional evidence in support of her application.**

As noted above, the district director initially denied the application on May 2, 2006 based on the applicant's failure to respond to the NOID. The applicant filed an appeal on June 1, 2006, asserting that she did in fact submit additional evidence in response to the NOID on April 3, 2006. The applicant provided a copy of an express mail receipt and a copy of a letter from the Flushing Central Lions Club, located in Flushing, New York, dated March 3, 2006, and signed by [REDACTED], **President. [REDACTED]** certified that the applicant had been a Lions member since December 1981, that she entered the United States prior to January 1, 1982, and that she resided in the United States in a continuous unlawful status except for brief absences. The regulation at 8 C.F.R. § 245a.2(d)(3)(v) sets forth guidelines for attestations provided by organizations. These guidelines provide a basis for a flexible standard of the information that such affidavits should contain in order to render them probative for the purpose of comparison with the other evidence of record. According to the guidelines set forth in 8 C.F.R. §§ 245a.2(d)(3)(v)(A) through (G), a signed attestation from an organization should: (1) identify the applicant by name; (2) be signed by an official whose title is shown; (3) show inclusive dates of

membership; (4) state the address where the applicant resided during the membership period; (5) be printed on the letterhead of the organization; (6) establish how the author knows the applicant and (6) establish the origin of the information being attested to. Here, [REDACTED] does not state the applicant's address of residence, establish the origin of the information being attested to, or establish how he knows the applicant, or whether he knew her during the requisite period. Furthermore, the applicant did not indicate on her Form I-687 at Part #32 that she was ever a member of this organization. As it does not conform to the regulatory standards and is inconsistent with the applicant's own testimony, this letter has limited probative value.

The director re-opened the application *sua sponte* based the applicant's evidence that she did in fact submit a response to the NOID within the time allotted. The district director also considered the additional evidence submitted with the applicant's appeal, which included five form-letter affidavits of witness from [REDACTED] and [REDACTED]. All of the affiants claimed to be personally acquainted with the applicant in the United States, and attested to the applicant's places of residence from October 1981 until May 2006, providing information consistent with what the applicant indicated on her Form I-687. Although not required to do so, all affiants provided proof of their identity. None of the affiants provided evidence that they themselves were residing in the United States during the requisite period.

Where asked to indicate how they determine the date of their beginning of their acquaintance with the applicant, the affiants did give varying responses. [REDACTED] stated "as a street vendor of garments and clothes for many years, we know each other since long. [The applicant] came to me frequently to buy discounted garments and clothing. She was a happy customer." [REDACTED]'s statement is significantly lacking in detail. He does not state where he worked during the requisite period, when he worked as a street vendor or how often the applicant purchased merchandise from him. His statement is insufficient to establish that he has direct, personal knowledge of the applicant's continuous residence during the requisite period. If the applicant was merely a former customer, his claim to have such detailed knowledge of the applicant's places of residence over a 25 year period is not credible.

[REDACTED] stated that he is the applicant's colleague and that the applicant "has been a noodle maker with unique experience for many years." According to the information provided by the applicant on her Form I-687, she has worked as a noodle maker in the United States since July 1991. [REDACTED] did not state where he and the applicant work, but his statement suggests that he is currently a co-worker of hers. The applicant indicates that she has worked for her current employer only since February 1998. [REDACTED] claim that he has known the applicant since prior to 1981 as a colleague is not credible. He does not claim to have any other relationship with her and it is thus not clear how he is able to attest to her residence in the United States during the requisite period.

[REDACTED] and [REDACTED] both stated that they have been worshipping with the applicant at the Buddhist Association of New York Pu Chao Temple since November 1981. It is not clear whether the affiants were referring to the "World Buddhist Association" listed on the applicant's Form I-687 and the applicant did not indicate that she was affiliated with a specific temple on her application. Although both affiants indicated that they have known the applicant for nearly 25 years, they claimed no particular relationship

with her other than stating that they attended the same temple. Absent some evidence of a relationship beyond a casual acquaintance, it is not clear how these affiants are able to provide specific dates of residence for the applicant dating back to October 1981, which was presumably before they even met her. The affiants' statements lack detail and are insufficient to establish that they have direct, personal knowledge of the information to which they are attesting. Accordingly, these affidavits have only limited probative value as corroborating evidence of the applicant's continuous residence for the duration of the requisite period.

Finally, [REDACTED] stated "as a very good friend for many years, I still remember distinctly that I have made the first acquaintance of [the applicant] at a wedding ceremony many years ago." He does not state specifically when or where he met the applicant, at whose wedding he met the applicant, or whether the wedding even took place in the United States. Because the affiant did not provide these crucial details, his statement is lacking in probative value. There is no basis to conclude based on this vague statement that [REDACTED] has direct knowledge of the applicant's continuous residence in the United States during the requisite period.

The director denied the application on August 22, 2006. In denying the application, the director advised the applicant that the affidavits she submitted were not credible. The director stated that CIS records showed that [REDACTED] was not in the United States before October 23, 1988; that [REDACTED] was not in the United States prior to December 3, 1984; that [REDACTED] was not in the United States before November 9, 1985; and that [REDACTED] was not in the United States prior to October 22, 1987.

The director further stated that the affidavit from [REDACTED] was not credible because the temple mentioned in the affidavit is not a registered organization, according to New York State records, and because his affidavit was not notarized by a licensed New York notary public as purported. Finally, the director observed that the letter from [REDACTED] was not credible because the [REDACTED] was not recorded as a registered entity with the State of New York until April 7, 2000. The director concluded that the applicant failed to establish her eligibility for temporary residence under Section 245A of the Act.

On appeal, the applicant asserts that she has attended the Buddhist Association of New York Pu Chao Temple with [REDACTED] and others since prior to 1982, when it was an unincorporated entity. She states that the organization is also known as "Buddhist Association of North America, Inc.", which was incorporated on April 27, 1982. The applicant offers no evidence in support of this claim, nor does she address whether the organization referenced by [REDACTED] and [REDACTED], the "Buddhist Association of New York Pu Chao Temple" is in fact the same organization as the "World Buddhist Association" she identified on her Form I-687. Furthermore, notwithstanding the discrepancies regarding the name and date of establishment of the Buddhist organization, the affidavits from [REDACTED] and [REDACTED], as discussed above, were otherwise significantly lacking in detail and thus have limited probative value.

The applicant asserts that the director's determination that the Lion's Club of New York was not registered with the State of New York until April 2000 is "100% not true." She states that the entity was in fact registered in New York since 1986, and that prior to that date, she used to "go clubbing" at the Lions Club in Chicago, which was registered in 1980. However, the applicant does not address the fact that she did

not indicate on her application that she was ever a member of any Lion's Club organization. The explanation provided by the applicant on appeal is not credible, given that [REDACTED] indicated that she was a member of the Flushing Central Lions Club since December 1981. The applicant now claims to have "gone clubbing" at a Lions Club in Chicago from 1981 until 1985, and states that the New York entity did not exist prior to 1986. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the application. *Id.* at 591. Furthermore, as discussed above, the letter from [REDACTED] was otherwise lacking in probative value because it does not conform to regulatory guidelines for attestations from organizations as set forth by 8 C.F.R. §§ 245a.2(d)(3)(v)(A) through (G). Given that the applicant now contradicts information contained in [REDACTED] letter, its probative value and credibility are further diminished.

Finally, the applicant states that [REDACTED] and [REDACTED] have all been her good friends since prior to 1982. She states that since all of them entered the United States without inspection, their presence was not known by the government until those dates referenced by the director. The applicant states that [REDACTED] and [REDACTED] are also good friends of her who were in the United States during the statutory period. The applicant further states that the notary public, [REDACTED] referenced by the director is in fact a licensed notary public and licensed real estate broker in the Chinatown community in New York. The applicant submits no additional evidence in support of these claims. However, it is noted that the director's use of CIS records to determine whether the affiants were in the United States during the requisite period is not entirely reliable, as correctly noted by the applicant. If the affiants entered the United States without inspection there would be no record of such entries in CIS records.

However, as discussed above, each of the eight affidavits submitted by the applicant were significantly lacking in probative value for other reasons, beyond the affiants' failure to provide evidence that they were in the United States during the requisite period. None of the affiants provided sufficiently detailed information regarding the applicant that would lend credibility to the claim that these individuals actually have direct, personal knowledge of the events and circumstances of the applicant's residence in the United States during the requisite period.

As is stated above, 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). The applicant has been given the opportunity to satisfy her burden of proof with a broad range of evidence pursuant to 8 C.F.R. § 245a.2(d)(3). However, this applicant has not provided any contemporaneous evidence of residence in the United States relating to requisite period. While she has submitted various affidavits and letters from persons claiming to have known her since that period, they are uniformly lacking in detail and probative value, and, at times, inconsistent with the applicant's own testimony. As such, the applicant cannot meet either the necessary continuous residency or continuous physical presence

requirements for legalization pursuant to section 245A of the Act. These affidavits are not sufficient to satisfy the applicant's burden of proof.

The absence of sufficiently detailed, consistent documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of this 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 applicant's reliance upon documents with minimal probative value, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the date she attempted to file a Form I-687 application 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.