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FILE: [REDACTED]  
MSC-04-328-10189

Office: NEW YORK

Date MAR 25 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:



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.

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. 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 noted that the applicant signed a sworn statement on June 17, 1997, testifying under penalty of perjury that her first entry into the United States was in 1990. 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 asserts that on June 17, 1997 she was ordered to sign the statement before an immigration officer without understanding its content. The applicant insists that she requested a translator, but her request was ignored.

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 August 23, 2004. The applicant signed this application under penalty of perjury, certifying that the information contained in the application is true and correct. At part #30 of the Form I-687 application where applicants are asked to list all residences in the United States since first entry, the applicant showed her first two addresses in the United States to be in New York, New York, from October 1981 until December 1991. At part #32 of the application, the applicant indicated that she has been absent from the United States on two occasions, January 1987 and December 1986, for a duration of one month or less. At part #33, of the application, she showed her first employment in the United States to be for Wendy Yee as a babysitter in Ozone Park, New York from October 1981 until February 1983. The applicant showed that she was then employed at Ruby Chinese Restaurant in Brooklyn, New York as a dishwasher from March 1983 until December 1991. The application indicates that the applicant has resided in the United States for the duration of the requisite period. However, the applicant has failed to corroborate this testimony with credible and probative evidence.

The applicant's assertion that she has resided in the United States since October 1981 is inconsistent with other documentation in her record. The applicant's record shows that on June 17, 1997 she was taken into custody by the Immigration and Naturalization Service (the Service) at the Sault Ste [REDACTED] port of entry. While in custody the applicant gave a sworn statement before an immigration inspector. The immigration inspector asked the applicant when she entered the United States. The applicant testified, "first time 1990, second time last year 1996." The Service's electronic database shows that the applicant was admitted into the United States as a B1 visitor on May 11, 1990.

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Id.*

The applicant submitted as corroborating evidence of her residence in the United States, four identical fill-in-the-blank affidavits from [REDACTED] and [REDACTED]. Each of these affidavits provides, "that [the affiant] has known that [REDACTED] Tan has lived continuously and unlawfully in the United States from before January 01, 1982 until 01/08/1988 when the applicant above-mentioned [sic] visited a QDE to apply for the 1986 'amnesty' program." These affidavits lack considerable detail on the affiants' relationship with the applicant. They fail to explain how the affiants first met the applicant. They also provide no information on the extent of the affiants' contact with the applicant during the requisite period. Therefore, these affidavits can only be afforded minimal weight as probative corroborating evidence.

The applicant submitted a *copy* of a letter from the [REDACTED] QDE Director, Polonia Organizations League Inc. The letter indicates that this organization was a Qualified Designated Entity during the original legalization application period. This letter, dated January 8, 1988, states that the applicant's Form I-687 was rejected because the applicant traveled outside of the United States and returned either without inspection, or without prior Immigration and Naturalization Service permission, or improperly using some type of travel documentation. The regulations at 8 C.F.R. § 245a.2(d)(6) provide that in judging the probative value and credibility of the evidence submitted, greater weight will be given to the submission of original documentation. Even if the applicant submitted an original of this letter, it would not corroborate the applicant's residence in the United States during the entire requisite period. This letter is only evidence of the applicant's residence in the United States on the date it was issued, January 8, 1988. Therefore, this letter can only be afforded minimal weight as probative corroborating evidence.

The applicant submitted her own affidavit stating, in part, that she has lived continuously and unlawfully in the United States, except for brief absences, from before January 1, 1982 through 1988 until present. The regulations at 8 C.F.R. § 245a.2(d)(6) provide that to meet her burden of

proof, an applicant must provide evidence of eligibility apart from her own testimony. Therefore, this letter alone is not probative evidence of the applicant's residence in the United States during the requisite period. The applicant must support her claims with probative, reliable, and credible evidence.

The applicant submitted letters from [REDACTED] Social Club, Inc. and Eastern States Buddhist Temple of America. The regulation at 8 C.F.R. § 245a.2(d)(3)(v) provides that evidence to establish proof of continuous residence in the United States during the requisite period may consist of an attestation by a church or other organization, which identifies the applicant by name, is signed by an official, shows inclusive dates of membership, states the address where the applicant resided during the membership period, includes the seal or letterhead of the organization, establishes how the author knows the applicant, and establishes the origin of the information being attested to.

The letter from [REDACTED] Club Manager of the [REDACTED] Social Club, provides:

This is to certify that [REDACTED] Than has been a club member since December, 1981. [REDACTED] is a good member, and likes to play Chinese chess. Every year we have some social activities, such as trips to go picnicking, apple-picking, touring, traveling, and so on, and [REDACTED] Than is always enthusiastic, and very helpful. [REDACTED] is a person of good moral character, and the longest period during her residence in the United States she has not been seen is about two months.

This letter does not meet the criteria delineated in the regulations. The letter fails to state the addresses where the applicant resided during her membership period. The letter also fails to establish how the author knows the applicant and origin of the information he has attested to. Therefore, this letter can only be afforded minimal weight as probative evidence.

The letter from [REDACTED] of the Eastern States Buddhist Temple of America, provides:

This would certify that Sister [REDACTED] has been following the Teachings of Buddha since December, 1981. She is a lay sister who has been exerting herself to learn Saddharmapundarika and Sutra of Nirvana since her first following and practicing Buddhism. The longest period during her residence in the United States she has not been seen to congregate is about two months.

This letter similarly does not meet the criteria delineated in the regulations. This letter fails to show the applicant's inclusive dates of membership. The letter states that the applicant has been following the teachings of Buddha since December 1981. However, it does not indicate that the applicant has been a member of the temple since this date. The letter also fails to state the addresses where the applicant resided during her membership period. Furthermore, it does not establish how the author knows the applicant and the origin of the information s/he has attested to. Therefore, this letter can only be afforded minimal weight as probative evidence.

Lastly, the applicant submitted two Citibank Investment Portfolios, dated January 27, 1982 and February 25, 1982. The customer service information on these portfolio statements contains a phone number and address for inquiries. The customer service contact information is in Forest Hills (Queens), New York and the phone number is [REDACTED]. This document is dubious since the area code 718 was not in existence until 1985. A Bell Atlantic Press Release on the issuance of the 347 area code provides, in part, “[t]he 212 area code was introduced in 1945 and served all of New York City for 40 years. The 718 area code was introduced in 1985, replacing the 212 area code in Brooklyn, Queens and Staten Island” (emphasis added).<sup>1</sup> Therefore, this document is of no value as probative, credible and reliable evidence.

On August 24, 2005, the director issued a Notice of Intent to Deny (NOID) to the applicant. The director noted that during the applicant’s interview she testified that the first time she entered the United States was in 1981 from Canada. The director found that the applicant also gave a sworn statement before the Service on June 17, 1997 where she testified that her first entry into the United States was in 1990. The director determined that based on her sworn statement the corroborating documentation she provided must be spurious. The director concluded that the applicant is ineligible for temporary resident status since she did not continuously reside in the United States during the requisite period.

In rebuttal to the NOID, the applicant submitted her own letter, which states in part:

An Immigration Officer took my fingerprints, asked my biographic information, and checked up with the computer. Later on a statement was presented in front of me, and I was ordered to sign the statement. I must sign. I had no choice. I didn’t even understand the meaning of the contents. No translator, nothing . . . The date of entry in 1990 in the statement mentioned in the letter sent to me by the Service, I believe, was on May 11, 1990, which was another date I returned to continue my residence after a brief absence from the U.S. It was on or about April 21, 1990 I went to Malaysia to see my seriously ill mother. After a brief visit I returned to the U.S. on 05/11/1990 to continue my residence.

On August 7, 2006, the director issued a decision to the applicant to deny her application for temporary residence. In denying the application, the director noted that during the applicant’s June 17, 1997 interview she did not make it known that she required an interpreter. The director found that since no additional documentation was submitted, the applicant has not established that she was present in the United States prior to her admitted entry in 1990. The director concluded that the applicant is ineligible for temporary residence under section 245A of the Act.

On appeal, the applicant again submitted her own written statement, which states, in part:

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<sup>1</sup> <http://www.prnewswire.com/cgi-bin/stories.pl?ACCT=104&STORY=/www/story/09-13-1999/0001020163&EDATE=>

Please be advised that on 06/17/1997 I did insist that I needed a translator. I kept saying Translator! Translator! I was totally ignored . . . Later on a statement was presented in front of me, and I was ordered to sign the statement. I must sign. I had no choice. I didn't even understand the meaning of the contents. No translator! I couldn't even consult anyone, asking whether I had the right not to sign. I want to stress the point again that the date of entry in 1990 in the statement mentioned in the letter sent to me by the Service was on May 11, 1990, which was another date I returned to continue my residence after a brief absence from the US. It was on or about April 21, 1990 I went to Malaysia to see my seriously ill mother. After a brief visit I returned to the US on 05/11/1990 to continue my residence.

The applicant also submitted a letter from [REDACTED] which states that she was detained with the applicant on June 17, 1997. [REDACTED] statement provides in part, "[l]ater on a statement was present in front of us, and we were ordered to sign the statement one each. We must sign. We had no choice. We didn't even understand the meaning of the contents. No translator! We couldn't even consult anyone, asking whether we had the right not to sign."

The applicant has essentially made two claims to overcome the basis for the director's denial. The applicant's first claim is that on June 17, 1997 she was denied a translator and forced to sign a statement without understanding its content. The applicant's second claim is that on April 21, 1990 she went to Malaysia to see her mother and after this brief visit she returned to the United States on May 11, 1990.

The applicant's claim that her entry into the United States on May 11, 1990 was a return from a brief absence is inconsistent with her application. The applicant's Form I-687 requests the applicant to list her absence from the United States since her first entry. The applicant responded that she has been absent from the United States for the duration of one month or less in both January 1987 and December 1986. There is no indication on this application of the applicant's absence from the United States for the period of April 1990 until May 1990. Therefore, the applicant has failed to provide a credible explanation of her May 11, 1990 entry into the United States.

The applicant's claim that she is not proficient in English and did not understand the content of her sworn statement is inconsistent with her record. The applicant's record contains a copy of a Form I-43, Baggage and Personal Effects of Detained Alien, which the applicant completed while she was in custody on June 18, 1997. On this form the applicant wrote a statement listing her personal property in the United States. The applicant wrote this statement in English and there is no indication that she used an interpreter to help her with the statement. Additionally, the applicant's record contains a copy of her New York Driver's License, issued July 15, 2003. In order to obtain a New York State Driver's License, the Department of Motor Vehicles requires the passage of a written test, road test, and the completion of a driver education course or a DMV-approved pre-licensing course. The applicant would, therefore, have to at least be proficient in English to obtain her Driver's License. Moreover, the applicant's Form I-687 shows that she completed the application without the use of a preparer. Finally, the record shows that on June 30, 2005, she gave a sworn statement before a Citizenship and Immigration Services

immigration officer during her interview for the instant application. This sworn statement indicates that the applicant did not utilize an interpreter for her interview. In sum, this evidence contradicts the applicant's portrayal of herself as person who is not proficient in English.

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. The applicant's record contains inconsistent evidence regarding her first date of entry into the United States. Pursuant to *Matter of Ho, supra*, it is incumbent upon the applicant to resolve any inconsistencies in the record by independent and objective evidence. However, the applicant has failed to provide independent and objective evidence of her first entry into the United States and subsequent continuous residence during the requisite period. The applicant submitted documents that when viewed either individually or in the totality are at best of minimal probative value. Moreover, the applicant submitted dubious account statements from Citibank, which further draw into question the overall credibility of her application. The applicant's failure to provide sufficient evidence to establish her continuous residence in the United States during the requisite period renders a finding that she has failed to satisfy her burden of proof, as delineated in 8 C.F.R. § 245a.2(d)(5). The applicant has not submitted sufficient evidence to establish that her claim is "probably true" pursuant to *Matter of E-M-, supra*.

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.