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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: LOS ANGELES

Date:

MSC 05 204 11101

**MAR 31 2008**

IN RE:

Applicant:



APPLICATION:

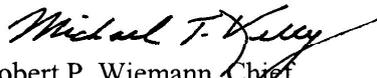
Application for Status as a Temporary Resident pursuant to Section 245A of the  
Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

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.

*for*   
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, Los Angeles. 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, on April 22, 2005. The applicant was interviewed on January 10, 2006. The director denied the application on June 29, 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. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

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 began living in the United States in November 1981; that she left the United States in February 1982 and returned March 1982; left the United States again in December 1986 and returned in January 1987; and left the United States in April 1988 and returned February 2001. In her January 10, 2006 interview, the applicant stated under oath, that she had been in the United States since November 1981; left the United States in 1982 to give birth and returned to the United States in August 1982; left the United States again in 1983 and returned the same year; and left the United States again in 1986 but did not specify a return date.

The applicant presented an affidavit dated December 14, 2005 from [REDACTED] at her interview. Mr. [REDACTED] stated he was a United States citizen, that he had personally known the applicant since 1981 to the present, and that "he is able to determine the date of his acquaintances with him [sic] since they were good family friends." The affiant states that he has personal knowledge of the applicant's addresses as listed in the affidavit from November 1981 to the present. The AAO observes that the affiant does not include proof that he was in the United States during the requisite time period and does not provide any details of the events and circumstances of his relationship with the applicant such as when and how they met nor does the affiant describe any subsequent interactions with the applicant. The AAO finds the absence of detail surrounding the circumstances of the affiant's relationship with the applicant detracts from the probative value of the affidavit.

The director denied the application on June 29, 2006 noting discrepancies in the applicant's testimony and noting her failure to indicate that she entered the United States legally at Newark, New Jersey for a stay from February 23 through March 28, 1995, and again March 28 through April 27, 1999 on her

application. The director found that the discrepancies in the record and a review of Citizenship and Immigration Services (CIS) records including the applicant's administrative file did not establish the applicant's continuous unlawful residence in the United States since before January 1, 1982 through the date the applicant (or the applicant's spouse) was "front-desked."

On appeal, the applicant confirms her statements regarding her absence from the United States between February 1982 and August 1982 to give birth to her son. She also notes that she failed to mention her entries into the United States in 1995 and 1999 because she was nervous and did not feel these absences were pertinent to the application.

The affidavit described above and the applicant's statement comprise the only documentation of the applicant's residence in the United States from prior to January 1, 1982 through the requisite time period. As the affidavit lacks detail and provides generic information regarding the applicant's presence in the United States, the AAO does not find it probative. 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. Moreover, the AAO observes that if the applicant had entered the United States prior to January 1, 1982, her six-month absence from the United States in 1982 breaks the continuous physical presence requirement to establish eligibility for this benefit.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period detracts 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 paucity of credible supporting documentation, the applicant's reliance upon a deficient affidavit, and the absence of continuous unlawful residence in the United States in 1982, 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.