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FILE:



Office: NATIONAL BENEFITS CENTER

Date: **MAY 01 2008**

MSC 05 251 10607

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. 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 Director, National Benefits Center, and is now before the Administrative Appeals Office 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. Specifically, the director noted that none of the applicant's submissions establish her presence in the United States prior to 1987. 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 disputes the director's conclusion and submits a brief statement in support of her assertions.

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 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 presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the alien 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.* 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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that she resided in the United States during the requisite time period. Here, the applicant has not met her burden. The record shows that the applicant did not submit any documentation in support of her application other than her Malaysian passport. Accordingly, on November 15, 2005, the director issued a notice of intent to deny (NOID) informing the applicant that her Form I-687 did not warrant approval without further evidence. The applicant's response included a partial bank statement, two pay stubs, a health club membership contract for [REDACTED], a purchase and shipping receipt issued to [REDACTED], a portion of the applicant's a cell phone bill. Aside from the fact that at least two of the documents bear a name different from the applicant's name, they all account for periods that are not within the statutorily relevant span of time. The applicant did submit two other documents that establish her presence during the relevant time period: an admission notice dated September 8, 1987 issued to the applicant by New York City Technical College and a photocopied high school diploma issued to the applicant by Fort Hamilton High School for a June 1987 graduation. As properly noted by the director, both of these contemporaneous documents only establish the applicant's presence in the United States in 1987.

On appeal, the applicant addresses the director's observation that she did not provide evidence of her unlawful entry, stating that an entry completed without inspection is, by nature, undocumented. The applicant further asserts that it is "unrealistic" to expect that she would have documentary proof of her residence in the United States prior to 1987 given her young age at the time.

The AAO acknowledges that it would be unreasonable to expect the applicant to document her unlawful entry into the United States. However, to demonstrate eligibility for the benefit sought in this matter, the applicant bears the burden of proving by a preponderance of the evidence that she resided in the United States in an unlawful status during the requisite period, beginning with the date of her unlawful entry that must precede January 1, 1982. Here, the applicant has failed to submit sufficient documentation to meet

that burden of proof. The record shows that the applicant was of school age during her purported entry to and subsequent residence in the United States. It is unclear why the applicant failed to submit any record of her high school attendance if she was present and going to a U.S. high school during the relevant time period. The applicant's provided a high school diploma shows that the applicant graduated high school in the United States in 1987, but it does not necessarily establish that the applicant attended a U.S. high school during all of her high school years. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In summary, the applicant's only relevant evidence consists of two documents that only establish her presence in the United States during a small portion of the statutory time period. Neither document establishes that the applicant was residing in the United States prior to 1987. In fact, these documents do not even establish that the applicant was present in the United States during all of 1987, as there is the possibility that the applicant only attended a U.S. high school for a portion of the school year. Thus, none of the documents submitted by the applicant fully support her claim.

The absence of sufficiently detailed supporting 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 that only establish the applicant's U.S. presence during an isolated portion of the statutory period, it is concluded that the applicant 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-*, 20 I&N Dec. 77. 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