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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

L1

FILE:

MSC-05-031-10058

Office: NEW YORK

Date: **MAY 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. If your appeal was dismissed or rejected, all documents have been returned to the National Records 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.

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, 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 denied the application for the reasons stated in the Notice of Intent to Deny (NOID). Specifically, 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 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 asserted that she needs to reopen her case for temporary resident status, she has the proof, and she has a money order for \$100. The applicant also provided two additional affidavits in support of her application.

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).

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) 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 October 31, 2004. 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 listed the following address during the requisite period: [REDACTED], New York from 1981 to 1994.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided three attestations that relate to the requisite period. The form affidavit from [REDACTED] states that, to the affiant's personal knowledge, the applicant resided at [REDACTED] in New York from February 1981 to May 2005. This is inconsistent with the information provided on the Form I-687, where the applicant indicated that she lived at the [REDACTED] address throughout the requisite period. This inconsistency calls into question the affiant's ability to confirm that the applicant resided in the United States during the requisite period.

The applicant also provided an affidavit from [REDACTED] which states that the affiant met the applicant in 1981 on the corner of "Canal." The affiant stated that he sold merchandise with the applicant on the corner of Canal Street. He stated that he and the applicant "would always speak to each other everyday until [they] became friends." This affidavit does not state that the applicant resided in the United States at any time other than sometime in 1981. Since the affidavit fails to date the end of the affiant's everyday contact with the applicant and the beginning of their friendship, the affidavit lacks detail regarding their frequency of contact and the applicant's absences from the United States during the requisite period. As a result, the affidavit is found to lack sufficient detail to confirm that the applicant resided in the United States prior to January 1, 1982.

The applicant provided a declaration from [REDACTED] M.D. dated August 19, 2006. The declaration includes a heading that states "Re: August 1981." The declaration states that the applicant requires physical therapy; that she requires "occupational, feeding, nutrition, and speech/language therapy;" and that the applicant originally visited the declarant because the applicant had problems with her right leg. This declaration fails to state that the applicant resided in the United States during the requisite period. In addition, it fails to provide details regarding the date and frequency of any contact with the applicant during the requisite period. The declaration also fails to indicate whether medical records exist, and it fails to include copies of any such records. Therefore, this declaration lacks sufficient detail to confirm that the applicant resided in the United States during the requisite period.

In denying the application the director noted 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.

On appeal, the applicant asserted that she needs to reopen her case for temporary resident status, she has the proof, and she has a money order for \$100.

In summary, the applicant has submitted attestations from only three people concerning that period. The affidavit from [REDACTED] is inconsistent with the applicant's Form I-687; the affidavit from [REDACTED] lacks sufficient detail and fails to state that the applicant resided in the United States at any time other than in 1981; and the declaration from [REDACTED] fails to state that the applicant resided in the United States during the requisite period and lacks sufficient detail.

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 contradictions between the applicant's statements on her application and the documents she provided, and given her 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 for the requisite period 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.