



U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE: [REDACTED] MSC-06-046-13552

Office: NEW YORK

Date: **MAY 13 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:

[REDACTED]

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 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 her application and evidence was not properly processed in accordance with the CSS/Newman Settlement Agreements.

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 November 15, 2005. 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 address in the United States to be in New York, New York from April 1981 until August 1989. At part #33, she showed her first employment in the United States to be for A.B.C. in New York, New York in the occupation of “worker” from April 1994 until September 1999. The application indicates that the applicant has continuously resided in the United States for the requisite period; however the applicant failed to corroborate her claim with credible, reliable and probative evidence.

On December 16, 2005, the director, National Benefits Center, issued a Notice of Intent to Deny (NOID). The NOID provides that the applicant failed to submit documentation to establish her eligibility for Temporary Resident Status. The applicant was afforded thirty (30) days to provide additional evidence in response to the NOID. Pursuant to 8 C.F.R. § 245a.2(d)(6), to meet her burden of proof, an applicant must provide evidence of eligibility apart from her own testimony. The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous 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 a number of supporting documents as evidence of her residence in the United States. This proceeding will focus only on those documents that relate to the requisite period. In this regard, the applicant submitted with her application a copy of a certificate from Chun Cin Jewelry, Inc. The certificate states that the applicant purchased a diamond from the firm on November 14, 1982. Pursuant to 8 C.F.R. § 245a.2(d)(6), in judging the probative value and credibility of the evidence submitted, greater weight will be given to the submission of original documentation. Therefore, this document is at the outset of lesser weight. Had the applicant submitted an original document, it could have been assessed for its probative value and credibility. Given the deficiency, this document is of minimal probative value and credibility as evidence of the applicant's residence in the United States as of November 14, 1982.

On November 15, 2006, the district director, New York, issued a denial notice to the applicant. In denying the application, the director noted that the applicant testified she first arrived in the United States in April 1981 on a B-2 visitor visa with her mother. The director found that the applicant failed to provide proof of her Form I-94, admission stamp, or duplicated Form I-94. The director also noted that the applicant testified that she renews her visa every five years. The director determined that the applicant failed to submit documents that would constitute by a preponderance of the evidence her residence in the United States during the requisite period.

On appeal, the applicant asserts that she entered the United States in April 1981 on a B1/B2 visa and there was an entry stamp on her passport. The applicant states that she does not possess this passport anymore because Malaysian passports expire every five years. The applicant clarifies that she needs to renew her passport every five years. The applicant states that pursuant to the CSS/Newman Settlement Agreements, Citizenship and Immigration Services must take into account the passage of time and attendant difficulties in obtaining corroborative documentation of unlawful residence. The applicant notes that she has submitted valid and credible documentation that she has kept for more than 20 years.

The sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6). The applicant has failed to provide probative and credible evidence of her residence in the United States during the requisite period. The applicant has submitted one document as evidence of her residence in the United States during the requisite period. This document is a certificate that shows that the applicant purchased a diamond from Chun Cin Jewelry on November 14, 1982. As discussed, this document is of minimal probative value and credibility as evidence of the applicant's residence

in the United States. Even if this document was found to be of high probative value and credibility, it still would not establish the applicant's continuous residence in the United States for the *entire* requisite period. The applicant has been given the opportunity to satisfy her burden of proof with a broad range of documentary evidence. *See* 8 C.F.R. § 245a.2(d)(3). On appeal, the applicant failed to submit any additional corroborating documentation. The applicant's own assertions regarding her evidence do not satisfy her burden of proof. *See* 8 C.F.R. § 245a.2(d)(6). The applicant's failure to provide sufficient documentary 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 in this proceeding. *See* 8 C.F.R. § 245a.2(d)(5).

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, seriously 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 lack of credible supporting documentation, it is concluded that the applicant 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.