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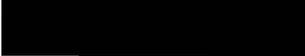
U.S. Citizenship
and Immigration
Services

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FILE:



Office: NATIONAL BENEFITS CENTER

Date: **MAY 15 2008**

MSC-05-334-10889

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.

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, National Benefits Center. 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. Specifically, the director stated that though the applicant submitted evidence in support of her application, none of this evidence was relevant to the requisite period. Because the applicant failed to provide evidence that she resided in the United States during 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 submits evidence that is relevant to the requisite period. She submits photocopies of two envelopes bearing her name and an address in the United States that are date stamped in 1985 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)(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) 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 his or 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 a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on August 30, 2005. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entr the a licant showed her addresses in the United States during the requisite period to be:

in New York City from 1982 until 1986; and in New York City from 1986 until 1992. At part #32 where the applicant was asked to list all of her absences from the United States, she indicated that she had no absences during the requisite period. Here, she showed her first and only absence from the United States to have been from October 1999 until January 2000. At part #33, where the applicant was asked to list all of her employment in the United States since she first entered, she showed that she was not employed during the requisite period. The first and only employment she showed was as a self-employed hairdresser from 1992 to the present. It is noted here that the applicant was born in

1975. This indicates that she would have been 17 years old when she began this employment. It is further noted that the applicant did not show a city or state associated with this employment.

The applicant has the burden of proving by a preponderance of the evidence that he has resided in the United States for the requisite period. 8 C.F.R. § 245a.2(d)(5). To meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. 8 C.F.R. § 245a.2(d)(6). The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that an applicant may submit 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 pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

Here, the applicant initially failed to submit evidence that she resided in the United States for the requisite period apart from her own testimony.

The director issued a Notice of Intent to Deny (NOID) to the applicant on November 17, 2005. On this NOID, the director stated that the applicant failed to submit evidence of the following: that she entered the United States before January 1, 1982 and then resided in a continuous unlawful status except for brief absences from before 1982 until the date she (or her parent or spouse) was turned away by Immigration and Naturalization Service (INS) when they tried to apply for legalization; that she was continuously physically present in the United States except for brief, casual and innocent departures from November 6, 1986 until the date that she (or her parent or spouse) tried to apply for legalization; and that she was admissible as an immigrant. The director granted the applicant 30 days within which to submit additional evidence in support of her application.

In response to the director's NOID, the applicant submitted documents including a lease dated and signed on December 31, 2003, receipts for payment of rent in 2005 and envelopes that were date stamped in 2000. The issue in the proceeding is whether the applicant resided in the United States during the requisite period. As none of these documents prove that the applicant resided in the United States during that time, they are not relevant evidence for this proceeding.

The director denied the application for temporary residence on July 26, 2006. In denying the application, the director noted that the applicant had failed to submit evidence that proved that she resided in the United States for the requisite period. Therefore, the director determined the applicant failed to meet her burden of proof.

On appeal, the applicant submits two photocopies of envelopes as follows in support of her application:

- A photocopy of an envelope that bears a stamp on May 29, 1985. It is noted that this envelope bears the address that the applicant indicated she resided at in 1985.
- A photocopy of an envelope August 17, 1985. It is noted that this envelope bears the address that the applicant indicated she resided at in 1985.

Here, though the applicant has submitted two photocopies of envelopes that show she resided in the United States in 1985, she has failed to submit evidence that proves she entered the United States on a date before January 1, 1982. She has further failed to submit evidence that supports her claim of having resided in the United States continuously during the requisite period. It is also noted that though the applicant, who was born in 1975, would have been seven years old at the time she claims to have entered the United States, she has not submitted any documentation from an adult who was responsible for her care during any part of the requisite period.

In summary, though the applicant submitted two envelopes are evidence of residence in the United States in 1985, she has not submitted evidence that spans the requisite period. She has further failed to submit any evidence that proves she resided in the United States on a date prior to January 1, 1982. The two envelopes stamped in 1985 alone are not sufficient to meet the applicant's burden of proving that she resided in the United States for the duration of the requisite period.

In this case, the absence of documentation that spans the requisite period to corroborate the applicant's claim of continuous residence during that time, 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 paucity of documents in the record, 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.