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U.S. Citizenship  
and Immigration  
Services

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[Redacted]

FILE: [Redacted] MSC-06-076-11567

Office: NEW YORK

Date: **MAY 30 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. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed or rejected, 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.

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, counsel for the applicant asserts that the affidavits she submitted are credible evidence of her residency in the United States since May 6, 1981. Counsel also affirms that she has remained continuously in the United States since her initial entry. Counsel's brief in support of her appeal maintains that the applicant entered the United States without inspection from Mexico on May 6, 1981, and consequently, no record of her entry at that time is available. Counsel also indicates that her letter of employment and her Application for the Replacement of Arrival-Departure Document (I-94) verify her unlawful status for the requisite statutory period.

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)(1) 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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to meet her burden of establishing continuous unlawful residence in the United States for the duration of 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 December 15, 2005. Part #30 of the Form I-687 requests applicants to list all residences in the United States since the date of first entry. In this case, the applicant claims that she lived at [REDACTED] New York, New York, from May, 1981 to June, 1986. Thereafter, the applicant claims that she moved to [REDACTED], New York, New York, in July, 1986, where she remains to this day. Similarly, at part #33, she avers that she was first self-employed as a vendor from June, 1981 to June, 1986. The applicant asserts that she has been employed by the Lafayette Seafood Corporation, 176 Lafayette Street, New York, New York, as a bookkeeper, from July, 1986 to the present day.

The applicant also submitted the following documentation:

1. An Application for Replacement/Initial Nonimmigrant Arrival-Departure Document (Form I-102) dated March 24, 2006. In Part 2 of the form, as reason for the application the applicant claimed that she is applying to replace her lost or stolen Form I-94. The applicant asserts on this form that her date of last admission to the United States was July 4, 1986.
2. An incident report dated December 26, 1995, from Las Vegas, Nevada. In this report, the applicant claims to have been the victim of a theft of her personal property that occurred on December 18, 1995, at McCarran Airport, Las Vegas, Nevada. She reported the loss of both Malaysian and U.S. currency, while carrying both a Malaysian passport and driver's license.
3. A letter of recommendation from the Lafayette Seafood Corporation, located at 176 Lafayette Street, New York, New York. The letter is not dated but is signed by [REDACTED], who declares that the applicant has worked for him from July, 1986 to May, 1997.
4. A letter dated May 2, 1997, addressed to the Consulate General of Malaysia, from Mr. [REDACTED] who claims that the applicant has been employed by the Lafayette Seafood Corporation since July, 1986.
5. A letter dated April 26, 2006, from [REDACTED]. Mr. [REDACTED] claims that he met the applicant at a Christmas Dinner in 1981. Mr. [REDACTED] includes a copy of his driver's license and his phone number.
6. A letter dated April 26, 2006, from [REDACTED]. Mr. [REDACTED] also states that he met the applicant at a Christmas dinner in 1981. Mr. [REDACTED] includes a copy of his driver's license and his phone number.

We will address each item of evidence in turn. The Form I-102 (request for a replacement I-94 arrival-departure document) does not establish the applicant's entry into the United States prior to January 1, 1982. Indeed, the applicant asserts therein that her most recent entry into the United States was July 4, 1986. Furthermore, the request for a replacement I-94 arrival-departure document was submitted on March 24, 2006, well after her application for legalization (Form I-687) submitted on December 15, 2005. Additionally, the applicant claims on appeal that no evidence of her initial entry into the United States exists, because she entered through Mexico without documentation on May 6, 1981. Therefore, a request for a replacement I-94 appears pointless and lacks probative value.

The theft report dated December 26, 1995 is equally without probative value. It establishes merely that the applicant was present in the United States on that date. It does not establish when she entered, where she lived, or how long she resided there. Indeed, at the time this incident occurred, the applicant submitted a Malaysian passport and driver's license as proof of

identity, despite the fact that she had allegedly been residing in the United States for over fourteen years.

The letter of employment from the Lafayette Seafood Corporation, and the letter addressed to the Malaysian Consulate General support the applicant's contention that she resided in the United States from 1986 to 1997. However, they do not support her contention that she entered the United States unlawfully in May, 1981. Although the letter of employment is on company letterhead, it fails to meet certain regulatory standards set forth at 8 C.F.R. § 245a.2(d)(3)(i), which provides that letters from employers must include the applicant's address at the time of employment; exact period of employment; whether the information was taken from official company records and where records are located and whether CIS may have access to the records; if records are unavailable, an affidavit form-letter stating that the employment records are unavailable may be accepted which shall be signed, attested to by the employer under penalty of perjury and shall state the employer's willingness to come forward and give testimony if requested. The statement by [REDACTED] does not include much of the required information and can be afforded minimal weight as evidence of the applicant's residence in the United States for the duration of the requisite period.

Ultimately, the only evidence submitted to support the applicant's initial entry consists of two letters from [REDACTED] and [REDACTED] who claim to have first met the applicant at a Christmas party in 1981. The letters from [REDACTED] and [REDACTED] are not notarized and lack sufficient detail to lend credibility to an alleged 25-year relationship with the applicant. Neither [REDACTED] nor [REDACTED] explain under what circumstances they met the applicant in 1981, other than to state that they met at a Christmas dinner. There are no details explaining how frequently they met the applicant, or whether they had direct, personal knowledge of the applicant's address at which she was residing during the critical time period between 1981 and 1986. It is also curious that [REDACTED] makes no mention in his letter that he was the applicant's employer from July 1986 to May 1997. The lack of detail regarding the events and circumstances of the applicant's residence is significant given each declarant's claim to have a friendship with the applicant spanning 25 years. Given these deficiencies, the letters are not persuasive, and have minimal probative value in supporting the applicant's claim that she entered the United States in May, 1981.

The director denied the application for temporary residence on September 27, 2006. In denying the application, the director found that the applicant's testimony that she entered the United States in 1981 is not credible. Specifically, the director referenced the information listed in the I-687, the statements submitted by [REDACTED] and [REDACTED] and the application for the replacement I-94 travel document. Thus, the director determined that the applicant had failed to meet her burden of proof by a preponderance of the evidence.

On appeal, the applicant asserts that she did arrive in the United States on May 6, 1981, but emphasizes that she entered without inspection through Mexico. Consequently, the applicant

maintains that no valid entry document exists. Otherwise, the applicant has submitted no new evidence in support of her appeal.

Other than her own assertions, the applicant has not provided any evidence of residence in the United States relating to the requisite statutory period or of entry to the United States before January 1, 1982. The statements of \_\_\_\_\_ and \_\_\_\_\_ lack credibility and probative value for the reasons noted. Moreover, the application for a replacement arrival/departure document (I-94) does not establish her initial entry into the United States and refers to her date of last admission as July 4, 1986. Although the applicant has provided proof of a theft incident in 1995, such proof does not cover the entire requisite period.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period undermines 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 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.