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

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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEW YORK Date: OCT 17 2008
MSC-06-038-13543

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: SELF-REPRESENTED[1]

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

[1] Though the applicant's Form I-694 Notice of Appeal of Decision is signed by [redacted] who indicates that he is the applicant's representative, and though the record contains a Form G-28 signed by [redacted], the AAO could find no evidence that Mr. is an accredited representative who is authorized to lawfully represent applicants in matters before CIS. Therefore, the applicant is considered self-represented for these proceedings.

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. Specifically, the director stated that the evidence that the applicant submitted in support of her claim of having maintained continuous residence in the United States for the duration of the requisite period was not sufficient to satisfy her burden of proof. Therefore, the director determined the applicant was not eligible to adjust to temporary resident status pursuant to the CSS/Newman Settlement Agreements and denied the application.

On appeal, the applicant asserts that she lost the passport which she used to first enter the United States in February 1981 and she states that the passport that she used when she traveled outside of the United States in 1987 was stolen. The applicant also submits additional evidence 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 applicant 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 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 a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on November 7, 2005. 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 showed her address in the United States during the requisite period to be [redacted] in Woodside, New York from February 1981 to May 1989. At part #32 where the applicant was asked to list all of her absences from the United States, she indicated that she had one absence from the United States during the requisite period, when she traveled to Malaysia to visit family in November 1987. At part #33, where the applicant was asked to list all of her employment in the United States since he first entered, she showed that she was employed by Salura Restaurant in New York, New York from December 1982 until October 1989.

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. 8 C.F.R. § 245a.2(d)(5). To meet his burden of proof, an applicant must provide evidence of eligibility apart from his or her 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 apart from her own testimony in support of her application.

The director of the National Benefits Center issued a Notice of Intent to Deny (NOID) to the applicant on December 6, 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 NOID, the applicant submitted the following documents:

- A photocopy of receipts for two checks paid to a travel company in Malaysia. The dates associated with these receipts are October 28, 1987 and November 25, 1987. Because these receipts are for services obtained from a company in Malaysia, and because they do not indicate the applicant's address when they were issued they do not offer proof that the applicant resided in the United States at the time they were issued.

- A photocopy of a flight schedule and hotel list. The date on this paper is November 25, 1987. Though this schedule appears to bear the applicant's name, the quality of the copy is such that it is not legible. Therefore, the AAO cannot determine the contents of this document.

- A Social Security Statement showing earnings beginning in 1995, which is subsequent to the requisite period. Because this statement does not show that the applicant earned income

in the United States during the requisite period, it carries no weight as evidence that she resided in the United States during the requisite period.

It is noted that the applicant also submitted evidence that she resided in the United States subsequent to the requisite period. The issue in this proceeding is whether the applicant submitted sufficient evidence to meet her burden of proving that she resided in the United States for the duration of the requisite period. Because this evidence is not relevant to the requisite period, it is not relevant to the matter at hand and therefore, it is not discussed here.

The director denied the application for temporary residence on January 18, 2007. In denying the application, the director noted that her office received additional evidence in response to the NOID issued by the National Benefits Center. However, the director found that this evidence, when considered with other evidence in the record, did not allow the applicant to meet her burden of establishing that she resided continuously in the United States for the duration of the requisite period. The director noted that the applicant failed to submit proof of her departure from and re-entry into the United States at the time of her travel back to Malaysia in 1987.

On appeal, the applicant submits a brief in which she asserts that the passport that she used when she traveled back to Malasyia in 1987 was stolen while the applicant was in London in 1995. The applicant further submits the following evidence in support of her application:

- Two photographs. These photographs appear to be of the applicant. However, they are not dated and it is not clear where they were taken. One is in front of a structure on a city street and the other is in front of snow covered trees. Because the AAO cannot determine when or where these photographs were taken, they do not carry any weight as proof that the applicant resided in the United States during the requisite period.

- A police report that states that items, including a Malaysian passport were stolen on January 10, 1995. This police report was completed by the Brompton Division of the London Metropolitan Police Service.

The AAO has reviewed the evidence in the record and has determined that the applicant has failed to satisfy her burden of proof. Though she has submitted evidence in support of her application, this evidence does not indicate that the applicant resided in the United States during the requisite period. She has submitted two receipts from a company based in Malaysia, an illegible flight schedule, a Social Security Statement that does not show that she earned income in the United States during the requisite period, photographs taken on unknown dates in unstated locations and a police report that states that a passport was stolen from the applicant in 1995. However, none of these documents indicates that the applicant resided in the United States for part or all of the requisite period.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the 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 supporting documentation that is relevant to the applicant's claim of having resided in the United States during the requisite period, 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.