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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: LOS ANGELES Date: OCT 31 2008
MSC-06-070-11859

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

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, Los Angeles. 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 issued a Notice of Intent to Deny (NOID) the applicant's claim of class membership on the basis that the applicant stated that she had not departed the United States from the date she first entered until March of 1993. The director granted the applicant 30 days within which to submit additional evidence in support of her application. The director stated that though the applicant submitted a response to the NOID, this response did not overcome the reasons that formed the basis for the denial of the application as stated in the NOID. The director also stated that the applicant failed to satisfy her burden of proving that she resided continuously in the United States for the duration of the requisite period and that this, rather than a negative a class member determination, was the ultimate reason for the denial of the application.

On appeal, the applicant asserts that her parents were absent from the United States for three months in 1987. She also asserts that the evidence that she has previously submitted allows her to be eligible to adjust to temporary resident status.

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 Citizenship and Immigration Services (CIS) on December 9, 2005. At part #30 where applicants were asked to list all residences in the United States since first entry, the applicant indicated her address in the United States during the requisite period was [REDACTED] in Lost Angeles, California from June 1981 until June 1990. 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. At part #33, where the applicant was asked to list all of her employment in the United States since she first entered, she stated that he was employed as by Jimmy Sport Wear in Los Angeles, California from June 1981 until July 1993.

The applicant has the burden of proving by a preponderance of the evidence that she has resided in the United States for the requisite period. 8 C.F.R. § 245a.2(d)(5). To meet her burden of proof, an applicant must provide evidence of eligibility apart from 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).

The record also contains notes taken by a Citizenship and Immigration Services (CIS) officer who interviewed the applicant regarding her Form I-687 application. The applicant stated that she first entered the United States in June 1981 and then resided with her aunt in Los Angeles and worked as a seamstress for Jimmy Sportswear. She indicated that her only absence from the United States was in March 1993, when her aunt was sick and that this was her only absence from the United States.

The record further contains a sworn statement written by the applicant in Spanish at the time of this same interview. This statement also states that the applicant first entered the United States in June of 1981 and that her first and only absence from the United States was from March to May of 1993 when she went to visit a family member who was sick.

The applicant did not submit evidence apart from her own testimony that is relevant to her claim that she resided continuously in the United States for the requisite period.

The director issued a NOID the applicant's claim of class membership to the applicant on April 6, 2006. In this NOID, the director stated that the applicant's claim that she was not absent from the United States from her date of first entry until March of 1993 caused her to fail to establish that she was a class member. 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 a declaration in which she stated that she first entered the United States in June of 1981 and that the first time she was absent from the United States was in March 1993. She asks that her application be reconsidered.

The director denied the application for temporary residence on February 16, 2007. In denying the application, the director reiterated that the applicant stated that she was not absent from the United States during the requisite period and then stated that the applicant failed to satisfy her burden of proving that she continuously resided in the United States for the duration of the

requisite period. The director stated that this caused the applicant to be ineligible to adjust to Temporary Resident Status pursuant to Section 245A of the Immigration and Nationality Act.

On appeal, the applicant asserts that at the time of her interview, she testified under oath that she first entered the United States in June of 1981 and that her parents were absent from the United States for three months in 1987 when they traveled to Mexico to see her aunt. It is noted that while the applicant asserts that she provided this testimony, the record does not reflect that she indicated this absence either during her interview or in her sworn, signed statement provided during that interview.

Further, though the director noted this absence in her decision, the basis of the director's denial of the application was not class membership, but rather whether the applicant provided sufficient evidence to satisfy her burden of proving that she resided continuously in the United States for the duration of the requisite period.

In this case, the absence of any documentation to corroborate the applicant's claim of continuous residence for the requisite period, seriously detracts from the credibility of her claim.

Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

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. Because the applicant did not provide testimony other than her own testimony as proof of her residence in the United States during the requisite period, she has not satisfied her burden of proof pursuant to the regulation at 8 C.F.R. § 245a.2(d)(6). Given that the applicant did not submit evidence of her residence 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 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