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U.S. Citizenship
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FILE: [REDACTED]
MSC-04-366-10752

Office: WASHINGTON

Date: **SEP 15 2009**

IN RE: Applicant: [REDACTED]

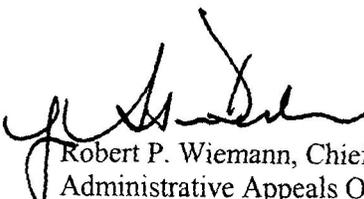
APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

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, Washington. 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 she entered the United States with her father, stepmother and sibling in February 1981 when she was 11 years old. The applicant furnishes an affidavit from [REDACTED].

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 on September 30, 2004. 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 at the Mansfield Hotel, Bronx, New York from February 1981 until March 1988.

The applicant submitted the following documentation:

- A notarized fill-in-the-blank statement from [REDACTED], dated June 6, 2005. This document provides that [REDACTED] first met the applicant in 1981 at the Muslim School located in Bronx. [REDACTED]’s assertion that she first met the applicant in 1981 at the Muslim School is inconsistent with other documentation in the record. The record shows a statement from the applicant, dated September 15, 2005, which provides, “[I] came to the United States of America in 1981 with my father, his wife and their baby girl. . . . I couldn’t go to school because my father said it wasn’t easy and he had to take care of some papers

first. And finally after almost one year he decided to take me in an African Islamic School . . .” Since the applicant claims that she did not begin school until 1982, it is improbable that [REDACTED] first met her at the Muslim School in 1981. Given this inconsistency, the statement is without any probative value as evidence of the applicant’s residence in the United States during the requisite period.

- A notarized fill-in-the-blank statement from [REDACTED]. This statement provides that [REDACTED] first met the applicant in 1981 at the Mansfield Hotel. The applicant’s Form I-687 shows that she resided at the Mansfield Hotel located in Bronx, New York from February 1981 until March 1988. This statement provides, “I had a friend who used to live in the hotel. Him [sic] and I used to go to [REDACTED]’s [sic] mother who was selling food in her room. We took our lunches at her mother’s room and I met her there and knew her there.” This statement fails to establish the time period during which [REDACTED] had contact with the applicant. It also fails to indicate the frequency of his contact with the applicant. Given these deficiencies, this statement is without any probative value as evidence of the applicant’s residence in the United States during the requisite period.

On August 31, 2005, the applicant was interviewed for temporary resident status. During the interview, the adjudication officer issued a Form I-72, Request for Evidence, to the applicant. The Form I-72 requests the applicant to submit evidence that she entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status since January 1, 1982 through May 4, 1988. The Form I-72 also requests the applicant to submit evidence of her continuous physical presence in the United States from November 6, 1986 until May 4, 1988. The adjudication officer granted the applicant a period of 30 days to submit this documentation.

In response to the Form I-72, the applicant submitted her own statement, dated September 15, 2005. The statement provides that she entered the United States in 1981, when she was 11 years old, with her father, stepmother, and sister. The statement indicates that she was living in a hotel room from 1981 until 1988. The statement provides that she attended the African Islamic School once a week.

On October 11, 2005, the director issued a Notice of Intent to Deny (NOID) to the applicant. The director determined that the applicant’s evidence and testimony do not demonstrate her eligibility for temporary resident status. The director afforded the applicant a period of 30 days to submit additional evidence in rebuttal to the NOID.

In response to the NOID, the applicant submitted the following documentation:

- A notarized letter, dated November 7, 2005, from [REDACTED] Imam of Masjid Malcolm Shabazz. This letter states, “[REDACTED] attended the Islamic community Assembly and assisted our religious meeting from 1981 to Id el Kabir 1988 with her parents. . . .” The regulations at 8 C.F.R. § 245a.2(d)(3)(v) provide that attestations from

religious organizations should state the address where the applicant resided during the membership period; establish how the author knows the applicant; and establish the origin of the information being attested to. This letter fails to comply with these delineated guidelines. Therefore, it is without any probative value as evidence of the applicant's residence in the United States during the requisite period.

- Another notarized statement from [REDACTED], dated November 7, 2005. This statement provides, "[I] have known this [REDACTED] since 1981 when a teacher of the Bronx Muslim school introduced her to me. Since that meeting we have been keeping in touch. We talk on the phone; sometimes I invite her for dinner or lunch. . . ." This statement is identical to the previous statement from [REDACTED], dated June 6, 2005. As stated above, Ms. [REDACTED]'s assertion that she first met the applicant in 1981 at the Muslim School is inconsistent with other documentation in the record. The record shows a statement from the applicant, dated September 15, 2005, which provides, "[I] came to the United States of America in 1981 with my father, his wife and their baby girl. . . . I couldn't go to school because my father said it wasn't easy and he had to take care of some papers first. And finally after almost one year he decided to take me in an African Islamic School . . ." Since the applicant claims that she did not begin school until 1982, it is improbable that [REDACTED] first met her at the Muslim School in 1981. Given this inconsistency, the statement is without any probative value as evidence of the applicant's residence in the United States during the requisite period.

On January 25, 2006, the director issued a notice to deny the application. In denying the application, the director determined that the applicant did not credibly establish that she is eligible for temporary resident status. The director determined that the applicant did not provide any new arguments to credibly establish that she entered the United States before January 1, 1982, and reside continuously in the United States in an unlawful status since that date through May 4, 1998. The director concluded that the applicant failed to meet her burden of proof in the proceeding.

Although the director was correct in her determination that the applicant failed to establish she resided in the United States during the requisite period, there was an error in her analysis. The director stated that the applicant failed to show that she continuously resided in the United States from January 1, 1982 through May 4, 1998. This is an incorrect assessment of the requisite period. According to the CSS/Newman Settlement Agreements, the term "until the date of filing" 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. Nevertheless, the director's actions must be considered to be harmless error as the AAO conducts a de novo review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(d)(6).

On appeal, the applicant asserts that she entered the United States with her father, stepmother, and sibling in February 1981 when she was 11 years old. The applicant states that she did not attend school because her father did not register her. The applicant states that in 1988 she returned to Senegal. The applicant states that her father passed away in July 2000. The applicant states that in July 2005 she looked in her father's personal belongings and could not find any **documents** related to her residence in the United States. The applicant furnishes an affidavit from [REDACTED]

The affidavit from [REDACTED] dated March 10, 2006, in pertinent part provides:

I [REDACTED] of [REDACTED] am writing [sic] this letter stating that I have known [REDACTED] since 1981. She is along time friend and a loving person I haven't seen for a very long time. I had met her at a cook out a riverside park. I call her nata for short. She is a wonderful person. I was so glad to see her again. . . .

This affidavit fails to illustrate [REDACTED] relationship with the applicant in the United States during the requisite period. Since the affidavit does not provide the location of Riverside Park, there is no indication that they first met each other in the United States. Furthermore, the affidavit fails to establish the time period during which [REDACTED] had contact with the applicant. It also does not convey the type of contact they maintained during the requisite period. Given these deficiencies, this statement is without any probative value as evidence of the applicant's residence in the United States during the requisite period.

In summary, the applicant has failed to provide credible, reliable and probative evidence of her residence in the United States during the requisite period. The applicant has not provided sufficient evidence to establish that she entered the United States prior to January 1, 1982. Nor has she established that she resided in the United States during the requisite period. 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 applicant has been given the opportunity to satisfy her burden of proof with a broad range of evidence. *See* 8 C.F.R. § 245a.2(d)(3). The applicant submitted as evidence of her residence in the United States during the requisite period, four statements from her acquaintances. These statements lack considerable detail on the authors' relationship with the applicant in the United States during the requisite period. As such, they are without any probative value as corroborating evidence. The applicant also submitted a statement from [REDACTED], Imam of Masjid Malcolm Shabazz. However, the Imam's statement fails to comply with the regulatory guidelines for attestations from religious organizations. *See* 8 C.F.R. § 245a.2(d)(3)(v). Pursuant to 8 C.F.R. § 245a.2(d)(6), the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. Since the applicant's documentation is without any probative value, she has not furnished sufficient evidence to meet her burden of proof in this proceeding.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, as well as the inconsistencies noted in the record, seriously detract 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 inconsistencies in the record and 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.