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**U.S. Citizenship  
and Immigration  
Services**

L1



FILE:

MSC-05-173-10094

Office: HOUSTON

Date:

SEP 22 2008

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 "Robert P. 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, Houston. 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. Specifically, the director indicated that she had identified inconsistencies between the applicant's statements and the submitted attestations. Attempts were made to contact the individuals who provided attestations for the applicant in support of her application and in response to a Notice of Intent to Deny, but these attempts were unsuccessful.

On appeal, the applicant asserts that the director's sole reason for denying the application was the fact that the applicant could only submit affidavits in support of her claim, and this is in conflict with the CSS/Newman Settlement Agreements. The applicant also asserts that the director never questioned the applicant's class membership until the final denial of the 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).

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 (CIS) on March 22, 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 indicated that she resided at [REDACTED] from October 1981 to January 1990. At part #33 where applicants were asked to list all employment in the United States since entry, the applicant failed to list any employment during the requisite period.

The record indicates that the applicant was interviewed by an immigration officer on January 10, 2006 in connection with her application for temporary resident status. The record of the interview indicates that the applicant stated that she first entered the United States on or about October 1981.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided multiple documents, some of which do not relate to the requisite period. She provided several attestations that relate to her claim of residence in the United States throughout the requisite period, together with identity documents for the declarants and other supporting documentation.

The applicant submitted a declaration from [REDACTED] who stated that she has known the applicant since February 1981 and the applicant was her neighbor's relative. The declarant stated that she sees the applicant during all festive holidays and birthdays. This declaration fails to specifically state that the applicant resided in the United States during the requisite period. In addition, it lacks details including where the declarant met the applicant and whether the declarant resided in the United States during the requisite period. As a result, the declaration will be given no weight in determining whether the applicant has established that she resided in the United States during the requisite period.

The applicant submitted a declaration from [REDACTED] who stated that he has known the applicant since June 1981 and that their families spend most of their time together. This declaration fails to specifically state that the applicant resided in the United States during the requisite period. In addition, it lacks details including where the declarant met the applicant, whether the declarant resided in the United States during the requisite period, and how they met each other. As a result, the declaration will be given no weight in determining whether the applicant has established that she resided in the United States during the requisite period.

The applicant submitted a declaration from [REDACTED] who stated that he has known the applicant since February 1981 and that the applicant was his next-door-neighbor. The declarant stated that his and the applicant's family became very close, that his family sees the applicant as part of the family and visit often, especially during the holidays. This declaration fails to specifically state that the applicant resided in the United States during the requisite period. In addition, it lacks details including whether the declarant met the applicant in the United States and whether the declarant resided in the United States during the requisite period. As a result, the declaration will be given no weight in determining whether the applicant has established that she resided in the United States during the requisite period.

The applicant submitted a declaration from [REDACTED] who stated that she has known the applicant since June 1981 and that she and her family have spent "great time" with the applicant. This declaration fails to specifically state that the applicant resided in the United States during the requisite period. In addition, it lacks details including where the declarant met the applicant, how they met each other, and whether the declarant resided in the United States during the requisite period. As a result, the declaration will be given no weight in determining whether the applicant has established that she resided in the United States during the requisite period.

The applicant provided an affidavit from [REDACTED] dated December 8, 2006, which states that the affiant met the applicant in October 1981 when they lived in the apartments on

the [REDACTED] The affiant stated that she lived in apartment 512 and the applicant lived in apartment [REDACTED]. She stated that she and the applicant became the best of friends “during that time” and have remained friends. She stated that the applicant has resided in the United States “all this time.” This information is inconsistent with the Form I-687 application, where the applicant indicated that she lived at [REDACTED] A, rather than on the [REDACTED]. This inconsistency casts doubt on the affiant’s claim to have knowledge of the applicant’s residence in the United States during the requisite period. Therefore, it will be given no weight in determining whether the applicant has established that she resided in the United States during the requisite period. The applicant provided a copy of an envelope that relates to the question of whether the affiant resided in the United States during the requisite period, but does not relate directly to the applicant’s claim of residence in the United States.

The applicant submitted an affidavit from [REDACTED] which states that he has known the applicant since 1981 when she was living at [REDACTED]. This affidavit fails to specifically state that the applicant resided in the United States at any time during the requisite period other than in 1981. In addition, this affidavit fails to provide detail regarding how the affiant met the applicant and their frequency of contact during the requisite period. As a result of this lack of detail, the affidavit will be given very little weight in determining whether the applicant has established that she resided in the United States during the requisite period.

The applicant provided an affidavit from [REDACTED] dated February 6, 2007, which states that the affiant met the applicant in December 1981 when the applicant was visiting a neighbor of the affiant when the affiant lived on West Gray. The affiant stated that their friendship continued throughout the years, they see each other at parties and family gatherings, and during the entire time the affiant has known the applicant, the applicant has resided in the United States. This affidavit constitutes some evidence that the applicant resided in the United States during the requisite period.

In denying the application the director concluded 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 indicated that she had identified possible inconsistencies between the applicant’s statements and the submitted attestations. Attempts were made to contact the individuals who provided attestations for the applicant in support of her application and in response to a Notice of Intent to Deny, but these attempts were unsuccessful.

On appeal, the applicant asserts that the director’s sole reason for denying the application was the fact that the applicant could only submit affidavits in support of her claim, and this is in conflict with the CSS/Newman Settlement Agreements. The applicant also asserts that the director never questioned the applicant’s class membership until the final denial of the application. It is noted that the director indicated that attestations provided by the applicant appeared to be inconsistent with the applicant’s statements, and that attempts to contact the affiants were unsuccessful. Therefore, the director is found not to have denied the application solely because the applicant

submitted only affidavits as evidence of her residence in the United States. In addition, it is noted that the director did not raise the issue of the applicant's class membership in the decision.

In summary, the applicant has provided attestations that conflict with her statements, lack sufficient detail, or fail to state that she resided in the United States during the requisite period. The applicant provided only one attestation that had probative value in relation to her claim of continuous residence in the United States. The absence of sufficient detailed supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of this 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 contradictions between the applicant's Form I-687 and oral statements and the documents she submitted, and given her reliance upon documents with minimal probative value, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States for the requisite period 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.