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U.S. Citizenship  
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Services

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[Redacted]

FILE: [Redacted] MSC-05-313-13229

Office: NEW YORK

Date: DEC 20 2007

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. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, 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 failed to submit additional evidence in response to a Notice of Intent to Deny (NOID) within the time allotted. The director denied the application for the reasons stated in the NOID. The NOID indicated 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.

On appeal, the applicant explained that an Asthma attack prevented her from timely responding to the NOID. She also explained the difficulty in obtaining documentation after living in the United States unlawfully and after the passage of time. The applicant also asked for sympathy in considering her application. Lastly, the applicant attached additional supporting documentation.

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.* 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 (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 demonstrate that she resided in the United States for the duration of the requisite period. Here, the submitted evidence is not relevant, probative, and credible.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on August 9, 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 only address in the United States during the requisite period to be [REDACTED] New York from September 1981 to November 1993. At part #31 where applicants were asked to list all affiliations or associations, clubs, organizations, churches, unions, businesses, etc., the applicant listed nothing.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided several documents, including multiple declarations that relate to the requisite period. The applicant provided an affidavit from [REDACTED] dated September 17, 1999. This declaration states that the applicant lived with the declarant at [REDACTED] New York from September 1981 to November 1993 by sharing house rent and utility bills. The declarant failed to provide copies of rent receipts or utility bills in her name. The declaration does not include details about how the declarant and the applicant met, how they came to be living

together, and how the declarant can date the beginning of their acquaintance. As a result, this declaration is found to lack sufficient detail.

The applicant provided a declaration from [REDACTED] dated October 12, 1991. This declaration states that the declarant has known the applicant since 1982 and that the applicant entered the United States before January 1, 1982 and has resided continuously in an unlawful manner until the date of the declaration. The declarant failed to explain how she is able to confirm the applicant resided in the United States prior to January 1, 1982 when she did not become acquainted with the applicant until 1982. In addition, the declarant provided no detail regarding where the applicant lived, how the declarant knew the applicant, and how the declarant is able to date the beginning of her acquaintance with the applicant. As a result, this declaration is found to lack sufficient detail.

In the declaration from [REDACTED] dated December 10, 1990, the declarant stated that the applicant is the declarant's close friend since 1982. This declaration fails to confirm the applicant resided in the United States during the requisite period.

In the affidavit from [REDACTED] dated December 21, 1992, the affiant stated that he has known the applicant since 1982, and that the applicant came to the United States before 1982. The affiant also stated that to his personal knowledge, the applicant left the United States in October 1987 and returned in November 1987. This affidavit does not specifically confirm the applicant resided in the United States throughout the requisite period or provide the applicant's address during the requisite period. The affiant also failed to provide additional details regarding the manner in which the affiant and the applicant became acquainted and how the affiant is able to date the beginning of his acquaintance with the applicant. As a result, this affidavit is found to lack sufficient detail.

The applicant provided a declaration from an individual whose name is illegible, dated April 24, 1992. The declarant stated that the applicant is known to the declarant since 1982, often used to visit the declarant, and had conversations on different matters and affairs. This declarant fails to confirm the applicant resided in the United States during the requisite period.

The declaration from [REDACTED], President and C in C of [REDACTED] states that the applicant is an active member of BHEC since April 1983. The declaration is printed on letterhead that indicates BHEC is an organization operating in Bangladesh, the United States, Canada, and other countries. Since the declaration does not specify the location where the applicant was a BHEC member, it fails to confirm the applicant resided in the United States during the requisite period. In addition, the declaration does not conform to regulatory standards for attestations by churches, unions, or other organizations. Specifically, the declaration does not state the address where the applicant resided during the membership period, does not establish how the author knows the applicant, and does not establish the origin of the information being attested to. 8 C.F.R. § 245a.2(d)(3)(i). Lastly, this declaration is inconsistent with the information provided on Form I-687 where the applicant failed to list BHEC when asked for all affiliations and associations. This inconsistency calls into question

whether the declarant can actually confirm the applicant resided in the United States during the requisite period.

In denying the application, the director determined that the applicant failed to submit additional evidence in response to the NOID within the time allotted. The NOID indicated 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.

On appeal, the applicant explained that an Asthma attack prevented her from timely responding to the NOID. She also explained the difficulty in obtaining documentation after living in the United States unlawfully and after the passage of time. The applicant also asked for sympathy in considering her application. Lastly, the applicant attached additional supporting documentation.

The applicant provided an affidavit from H [REDACTED] dated August 11, 2006. The affiant stated that he has known the applicant "since Oct. 1981 (1981) or (1986 to 1988)." It is unclear whether the affiant is stating that he has known the applicant since October 1981 or since 1986. The affidavit states that the affiant knows the applicant was continuously present in the United States from January 1, 1982 until May 4, 1988, and that the applicant is a very good friend of the affiant and his wife. This affidavit fails to provide detail regarding the circumstances in which the affiant met the applicant, how the affiant is able to date the beginning of his acquaintance with the applicant, and the address at which the applicant resided during the requisite period. Therefore, this affidavit is found to lack sufficient detail.

The applicant provided a declaration from [REDACTED], MD in New York, dated November 18, 1987. In this declaration, the declarant stated that he has known the applicant since December 1981. The declarant stated that the applicant was first seen by the declarant for abdominal pain and has been the declarant's patient until present. This declaration does not specifically confirm the applicant resided in the United States during the requisite period. In addition, the declaration does not refer to or provide any medical records, explain how the declarant was able to recall details regarding his first visit with the applicant, or provide the applicant's address during the requisite period. As a result, this affidavit is found to lack sufficient detail.

The applicant provided a copy of a receipt from Save-A-Thon dated June 27, 1983. This receipt does not list the applicant's address. Therefore, it is found not to confirm the applicant's residence during the requisite period.

The applicant provided a copy of an envelope listing her name and address as the sender. The postal cancellation date listed on the envelope appears to be either October 19, 1981 or October 19, 1987. This envelope confirms only that the applicant resided in the United States during one particular month of the requisite period.

In summary, the applicant has provided contemporaneous evidence that either does not confirm her residence during the requisite period or confirms only that she resided in the United States during one month of the requisite period. Specifically, the receipt provided by the applicant fails to list her address and, therefore, does not confirm her residence during the requisite period. The envelope provided by the applicant confirms her residence for only one month of the requisite period. The applicant also provided affidavits and declarations that fail to confirm she resided in the United States during the requisite period, lack sufficient detail, or do not conform to regulatory standards. The affidavit from [REDACTED] the declaration from [REDACTED] and the affidavit from [REDACTED] lack sufficient detail. The declarations from [REDACTED] and the individual whose name is illegible fail to confirm the applicant resided in the United States during the requisite period. The affidavit from [REDACTED] and the declaration from [REDACTED] both lack sufficient detail and fail to specifically confirm the applicant resided in the United States during the requisite period. The declaration from [REDACTED] fails to confirm the applicant resided in the United States during the requisite period, does not conform to regulatory standards, and is inconsistent with the information provided on Form I-687.

The absence of sufficiently 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 statements and the declaration she provided, 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.