U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: NEW YORK Date: NOV 29 2007

MSC 05 232 14059

IN RE: Applicant: [redacted]

APPLICATION: Application for Temporary Resident Status under 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 National Benefits Center. If your appeal was sustained, or if the matter 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, on May 20, 2005. 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 as 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, counsel asserts that the director's decision was erroneous as a matter of law, and that the applicant has established that she was physically present in the United States prior to January 1, 1982 through May 4, 1988 through credible and reliable evidence.

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).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "until the date of filing" shall mean until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file. 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 periods, 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 regulation at 8 C.F.R. § 245a.2(d)(3)(iv) states that hospital or medical records showing treatment or hospitalization of the applicant or his or her children must show the name of the medical facility or physician and date(s) of the treatment or hospitalization.

The regulation at 8 C.F.R. § 245a.2(d)(3)(v) states that letters from churches, unions or other organizations attesting to the applicant's residence must: identify the applicant by name; be signed by an official whose title is shown; show inclusive dates of membership; state the address where the applicant resided during membership period; include the seal of the organization impressed on the letter or the letterhead of the organization; establish how the author knows the applicant; and establish the origin of the information being attested to.

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

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 continuously resided in the United States in an unlawful status for the duration of the requisite period. Here, the submitted evidence is not relevant, probative, and credible.

In a February 28, 2006, Notice of Intent to Deny, the director stated that the applicant furnished no evidence of her claim that she entered the United States on June 7, 1981 in Miami, Florida. The director also stated that the applicant failed to submit any credible evidence to establish her continuous unlawful residence from such date through May 4, 1988. The director granted the applicant thirty (30) days to submit additional evidence.

In a June 21, 2006, Notice of Decision, the director determined that the submitted documentation was insufficient to overcome the grounds for denial. The director stated that the additional affidavits were neither credible nor amenable to verification. Credible affidavits are those which include some documents identifying the affiant, some proof that there was a relationship between the applicant and affiant and some proof that affiant was in the United States during the statutory period.

The record reflects that the applicant submitted two letters from [redacted], one undated and one dated March 20, 2006. In both letters, [redacted] stated that he has treated the applicant for various medical reasons since 1986 to 1987, every six months from 1990 to 2000, and once a year from 2003 to the present. He further stated that there are no facts to suggest she left the country throughout those years and that she has maintained her continuous physical presence in New York. [redacted] did not submit medical records showing the date(s) of the treatment as required under 8 C.F.R. § 245a.2(d)(3)(iv).

The applicant submitted a July 8, 2006, letter by [redacted] of Pilgrim Calvary Mission Church, Inc. [redacted] stated that he has known applicant since November 1981 to the present. He stated that she joined the congregation in June 1984. He also stated that she taught Bible school and visited people at home, in nursing homes and other institutions. [redacted] failed to show inclusive dates of membership, state the address where the applicant resided during membership period, and establish the origin of the information being attested to as required under 8 C.F.R. § 245a.2(d)(3)(v). It is further noted that the applicant indicated she had no affiliations or associations on her Form I-687.

The applicant also submitted a July 13, 2006, notarized letter by [redacted] Director of Haitian American Civic Center, Inc. [redacted] certified that she employed the applicant as a babysitter from 1981 to 1983 at an annual wage of $9,000.00. [redacted] did not provide the applicant's address at the time of employment or periods of layoff, declare whether the information was taken from their records, and identify the location of such records and state whether such records are accessible or in the alternative state the reason why such records are unavailable as required under 8 C.F.R. § 245a.2(d)(3)(i). The applicant did not list employment with [redacted] on her Form I-687.

The record reflects a May 9, 2005, letter by [redacted] who stated that the applicant arrived on June 7, 1981, and resided with her until the present. [redacted] stated that the applicant was her niece and helped raise her children. The applicant also submitted a July 12, 2006, notarized letter by [redacted] stated that the applicant babysat for his brother, [redacted] from 1981 to 1985. The affiants did not include any supporting documents identifying themselves or

their residence in the United States. They did not provide any corroborating information about the applicant's method of entry into the United States or residence during the requisite period.

The applicant has not provided any contemporaneous evidence of residence in the United States during the duration of the requisite period. Although not required, none of the affidavits included any supporting documentation of the affiants' identity or presence in the United States. The absence of sufficiently detailed and consistent 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 applicant's 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 from prior to January 1, 1982 through the duration of the requisite period.

Therefore, based on the above, the applicant has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the duration of the requisite period as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M--, supra.* Accordingly, the applicant is ineligible for temporary resident status under section 245A of the Act.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.