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U.S. Citizenship
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[REDACTED]

FILE: [REDACTED]
MSC-05-356-11204

Office: BALTIMORE

Date: **AUG 27 2008**

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. 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 if your case was 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, Baltimore. 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 appeal¹, the applicant asserts that she has met the requirements to establish eligibility for temporary resident status pursuant to the settlement agreements. She claims that she “was physically present during the program,” but that she does not have any documents to establish her residence and physical presence for the requisite period.

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

¹ The AAO notes that the record before us contains a Notice of Entry of Appearance as Attorney or Representative (Form G-28). However, the Notice of Appeal (Form I-694) is signed by the applicant and not by counsel of record.

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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to meet her burden of establishing continuous unlawful residence in the United States for the duration of 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 September 21, 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 first address in the United States to be on [REDACTED]; from May 1981 to July 1990. Similarly, at part #33, she described her employment in the United States as a private duty homecare provider from August 1981 to the present.

The applicant submitted no other documentation in support of her application for temporary residence. On November 17, 2005, the district director issued a Notice of Intent to Deny (NOID) explaining that the applicant had failed to submit any documentation beyond her own assertions that she met the requirements for eligibility pursuant to the terms of the settlement agreements.

The applicant was granted 30 days to submit additional documentation, and was informed that a failure to respond to the NOID would result in the denial of his application.

In response to the NOID, the applicant submitted notarized declarations from the following individuals:

- [REDACTED] dated December 12, 2005. [REDACTED] states that she is a citizen of the United States, and that “she has personally known and has been personally acquainted in the United States with [the applicant].” [REDACTED] attests to the applicant’s good moral character. [REDACTED] statement is of extremely limited probative value, as it does not provide any factual details regarding how she knows the applicant, how she dates the circumstances of her relationship with the applicant, or any other indication of how and when they met, or where the applicant lived during the relevant period of time.
- [REDACTED] dated December 10, 2005. [REDACTED] claims that he first met the applicant at the home of a family friend sometime in 1981. He attests that he has remained good friends with the applicant since that time. [REDACTED] also submitted a statement from the Consulate General of Ghana dated January 15, 1989, stating that [REDACTED] registered with the Ghanaian consulate on December 12, 1980. The statement from the Consulate General of Ghana establishes that the affiant was present in the United States in December 1980, but it does not indicate that the applicant also was present prior to January 1, 1982. [REDACTED]’s affidavit is devoid of any specificity regarding where he first met the applicant, how he dates his acquaintance with her, or how he has direct, personal knowledge of the facts and circumstances of the applicant’s entry and residence in the United States. For these reasons, the declaration from [REDACTED] has very limited probative value as evidence of the applicant’s continuous residence in the United States since a date prior to January 1, 1982.
- [REDACTED], dated December 13, 2005. [REDACTED] states that the applicant is a friend of the family, and that they met in December 1981 at a Christmas party at a friend’s house. The AAO notes that this affidavit is also of almost no probative value, as it is equally lacking in verifiable factual detail. The declarant does not indicate under what circumstances he met the applicant in 1981, how he dates his acquaintance with the applicant, an address where the applicant resided in the United States, or how frequently he had contact with her.

It is noted that none of the declarants stated with any specificity where they first met the applicant, how they date their acquaintance with her, or how they have direct, personal knowledge of the address at which she was residing during the critical time period commencing in January 1982. The declarants’ uniformly ambiguous references to meeting at the homes of friends, and claiming a long standing friendship over a period of many years are not persuasive. The lack of detail regarding the events and circumstances of the applicant’s residence is significant given each declarant’s claim to have a friendship with the applicant spanning over 20

years. For these reasons, all of these declarations listed above have very limited probative value as evidence of the applicant's continuous residence in the United States since a date prior to January 1, 1982.

The director denied the application for temporary residence on January 5, 2007. In denying the application, the director discussed the three affidavits noted above. The director stated that attempts to reach [REDACTED] at the phone numbers provided in the affidavits were unsuccessful. Furthermore, the director noted that, when contacted by phone, [REDACTED] claimed that he did not recall writing a statement in support of the application. Thus, the director determined that the applicant had failed to meet her burden of proof by a preponderance of the evidence.

On appeal, the applicant asserts only that she "was physically present during the program," but that she does not have any documents to establish her residence and physical presence for the requisite period. In support of the appeal the applicant offers an additional sworn declaration from [REDACTED] dated January 22, 2007. The AAO notes that this affidavit contains no further details regarding the circumstances of the applicant's entry and residence in the United States, and thus, is of no relevant, probative value in establishing that the applicant meets the eligibility requirements listed in the settlement agreements. The applicant also submitted a new sworn declaration from [REDACTED], dated January 22, 2007. The affiant states therein that he has known the applicant since 1981, that they met at a party, and that they "have kept in touch since then." Because this declaration is vague, lacks factual detail, and does not explain with any specificity how the affiant met the applicant, how he dates his acquaintance with her, or elaborate on a 20 year relationship with her, the AAO concludes that the declaration from Mr. [REDACTED] is not credible.

In summary, the applicant has not provided any probative evidence of residence in the United States relating to the period from January 1, 1982 to 1988 or of entry to the United States before January 1, 1982 except for her own assertions and the statements and affidavits noted above. The statements and affidavits lack credibility and probative value for the reasons noted.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts 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 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.