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

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FILE:

MSC-04-343-10712

Office: NEW YORK

Date:

JUN 09 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:



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, on September 7, 2004. 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. Specifically, the director noted that the applicant failed to submit sufficient evidence, other than her own statement, that she initially entered the United States prior to January, 1982. 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.

The applicant is represented by counsel on appeal. The applicant's counsel maintains that she is eligible for temporary resident status. Counsel argues that the applicant's testimony "should not be rejected." In corroboration of her claim of residence, the applicant submits two new affidavits that affirm she initially entered the United States in December of 1981.

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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.2(d)(6).

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. In this case, the applicant has provided no evidence other than her own statement and two affidavits, one from [REDACTED], and one from the applicant's sister, [REDACTED].

[REDACTED] provides a copy of her Jamaican passport and a copy of her U.S. certificate of naturalization. She avers that she first met the applicant in December of 1981 when the applicant stopped by her house to deliver gifts from [REDACTED]'s daughter in Jamaica. [REDACTED] also claims that the applicant visited her on several occasions while the applicant resided with her sister on [REDACTED]. The affiant states further that she and the applicant went shopping, out to dinner, attended movies, and generally "spent a lot of time at my house together especially since my daughter who is a good friend of hers came to live here in 1985."

The affidavit is undated, but it is notarized. As it was submitted on November 30, 2006, in conjunction with the applicant's appeal, the AAO concludes that [REDACTED] attests to a 25-year relationship with the applicant. As such, the affidavit lacks any further detail regarding [REDACTED]'s claimed relationship with the applicant. The affidavit fails to note where the applicant resided during the requisite period, except to state that at some point in time, the applicant resided with her sister on [REDACTED]. The

AAO notes that the applicant's application for status as a temporary residence (Form I-687) does not list a residence with a [REDACTED] address. For these reasons, [REDACTED]'s affidavit can be afforded minimal weight as evidence of the applicant's residence and presence in the United States for the requisite period.

The affidavit from the applicant's sister, [REDACTED], is identical in format. [REDACTED] also submits photocopies of both her Jamaican and United States passports. [REDACTED] avers that they grew up together in Jamaica, that she and another sister met the applicant at JFK airport when she arrived in December, 1981. [REDACTED] states that she and the applicant "spent time together on my days off." The affiant also claims that she and the applicant went sight seeing in lower and midtown Manhattan, went shopping and visiting with other relatives, and spent holidays together. [REDACTED] claims to have been living at [REDACTED] Bronx, New York, when the applicant first arrived in the United States in December, 1981. [REDACTED] does not state that the applicant resided with her at that address, and the AAO observes, again, that the applicant does not mention a residence at this address. [REDACTED] affidavit lacks any further detail regarding her relationship with the applicant.

The AAO observes that neither affidavit provides sufficient detail that would support the credibility of the information contained therein or render it amenable to verification. For these reasons, [REDACTED]'s and [REDACTED] affidavits can be afforded minimal weight as evidence of the applicant's residence and presence in the United States for the requisite period.

The remaining evidence in the record is comprised of the Form I-687 application and the applicant's statements. The information contained in the Form I-687 reveals that the applicant stated therein that she resided at [REDACTED], Brooklyn, New York from 1981 to 1982. This information contradicts [REDACTED]'s statement that she resided with her sister on [REDACTED]. During her interview with a Citizenship and Immigration Services (CIS) officer on July 7, 2005, the applicant confirms that she resided for one month at [REDACTED] Brooklyn, New York. Furthermore, in the applicant's response to the Notice of Intent to Deny, the applicant asserts that she resided at [REDACTED] with a friend until 1982. There is no mention of having resided at an address on [REDACTED], further undermining the probative value of the two affidavits submitted by the applicant in support of her appeal.

In this case, the applicant has not provided any credible evidence of residence in the United States relating to the requisite period. The two affidavits in the record are bereft of sufficient detail to support the applicant's claim of residence since 1981; and are inconsistent with the applicant's assertions. As noted above, to meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.2(d)(6).

The absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the 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 and the applicant's reliance on two affidavits that have been found to have minimal probative

value, it is concluded that the applicant 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.