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

PUBLIC COPY

L1

[REDACTED]

FILE:

[REDACTED]

Office: NEW YORK Date:

JUN 26 2008

MSC 05 263 10501

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.

for *Michael T. Kelly*
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 June 20, 2005. The applicant was interviewed on October 24, 2005. On July 5, 2006, the director issued a Notice of Intent to Deny (NOID) the application. The record does not contain the applicant's response. On appeal, counsel for the applicant asserts that the director used too strict a standard, did not give proper weight to the evidence submitted, and disregarded evidence and justifiable explanations of the applicant's physical presence in the United States within the required period and her travel overseas.

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 applicant attempted to file the application. 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 or attempting to file 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 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 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 "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. See 8 C.F.R. § 245a.2(d)(6).

Even if the director has some doubt as to the truth, if the applicant 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 establish her entry into the United States prior to January 1, 1982 and continuous unlawful residence since such date through the date she attempted to file the application.

On the Form I-687, the applicant claimed that she had first entered the United States in July of 1978 as a B-2 visitor and that she had left the United States only once on August 3, 1985 to visit relatives in Poland and re-entered the United States on September 7, 1985 as a B-2 visitor. The applicant listed her addresses for the pertinent time period as: [REDACTED] Brooklyn, New York from 1978 to 1980; [REDACTED] Brooklyn, New York from 1981 to 1986; [REDACTED], Brooklyn, New York from 1986 to 1990. The record also includes three affidavits regarding the applicant's residences during the pertinent time period:

- A July 29, 1991 affidavit signed by [REDACTED] certifying that the applicant lived at her residence at [REDACTED] Brooklyn, New York from September 15, 1978 to December 3, 1980 where the applicant worked as a live-in housekeeper;
- A July 29, 1991 affidavit signed by [REDACTED] certifying that the applicant lived at her residence at [REDACTED], Brooklyn, New York from December 15, 1980 to January 1, 1981 where she worked as a live-in babysitter;
- A July 31, 1991 affidavit signed by [REDACTED] certifying that the applicant resided in her house at [REDACTED], Brooklyn, New York from January 1, 1981 to December 15, 1986;
- A June 28, 1991 affidavit signed by [REDACTED] certifying that the applicant resided at [REDACTED], Brooklyn, New York from December 15, 1986 to April 1, 1990.

The record also contains information regarding the applicant's claimed employment history in the United States, in addition to the affidavits provided by [REDACTED] and [REDACTED], including:

- A July 29, 1991 affidavit signed by [REDACTED] certifying that she employed the applicant from January 15, 1981 to the present time (July 29, 1991) as a housekeeper at a current salary of \$120 weekly;
- A July 29, 1991 affidavit signed by [REDACTED] certifying that the applicant was employed as a cleaning lady since January 1, 1981 to the present time (July 29, 1991) at a current salary of \$18,000 per annum and that this information comes from personnel records of the firm that are not open to inspection because of their confidentiality.

The record further contains a copy of the applicant's March 28, 2005 social security statement of yearly earnings. The statement indicates the applicant had social security earnings in 1979 of \$7,442 and in 1980 of \$7,159; no social security earnings from 1981 through 1994; and various social security income from 1995 to 2003, the last reported information.

The applicant has also provided two form affidavits including:

- A July 31, 1991 affidavit signed by [REDACTED] listing the applicant's various addresses during the requisite time period and noting that he was acquainted with the applicant through friendship by living in the same building. The affiant noted that the longest period in which he had not seen the applicant was one week;
- A July 31, 1991 affidavit signed by [REDACTED] listing the applicant's various addresses during the requisite time period and noting that she was acquainted with the applicant by living in the neighborhood. The affiant noted that the longest period in which she had not seen the applicant was two weeks;

The applicant provided a July 30, 1991 statement signed by the Reverend [REDACTED] certifying that the applicant had been a parishioner of the St. Stanislaus Kostka Parish since October 1978. The affidavit is written on church letterhead but does not include the church seal.

The applicant also provided copies of three shipping receipts/invoices showing the applicant's address as [REDACTED] in Brooklyn, New York. One receipt appears to be dated December 30, 1981, one receipt appears to be dated October 11, 1983, and one receipt appears to be dated July 10, 1988. The record also includes three additional receipts with illegible dates and an additional receipt that is dated October 15, 1987. The record also contains photocopies of savings deposit slips showing the applicant as the depositor to the Polish and Slavic Federal Credit Union with dates in 1986, 1987, and 1988.

The AAO has reviewed the documentation submitted and observes the following deficiencies and discrepancies. The applicant failed to include her [REDACTED] Brooklyn, New York address on

the Form I-687. The AAO notes that [REDACTED] indicates that the applicant only lived and worked at this location for a two-week period; thus the lack of the applicant's notation on the Form I-687 may be excused. The applicant, however, has presented additional information that undermines the applicant's continuous unlawful residence in the United States for the requisite time period. For example, the applicant indicates that she was employed from January 1981 to July 1991 and has submitted two affidavits to substantiate this employment. The applicant's social security earnings statement does not list any earnings during this time frame. The applicant's information on the form I-687 and the two employment affidavits are inconsistent with the social security statement. In addition, pursuant to 8 C.F.R. § 245a.2(d)(3)(i), letters from employers should be on employer letterhead stationary, should declare whether the information was taken from company records, identify the location of such company records and state whether such records are accessible or why the records are unavailable. The AAO notes that the [REDACTED] affidavit indicates that his information comes from personnel records and that the records are not open to inspection for confidentiality reasons, but the AAO does not find this a satisfactory reason. The AAO finds these two employment affidavits deficient in the information provided and inconsistent with the applicant's social security earnings statement.

The AAO has also reviewed the affidavit from Reverend [REDACTED] certifying that the applicant had been a parishioner of the St. Stanislaus Kostka Parish since October 1978. Pursuant to C.F.R. § 245a.2(d)(3)(v), letters or attestations from religious organizations must include inclusive dates of the applicant's membership, the applicant's address(es) during the membership, establishment of how the author knows the applicant, and establishment of the origin of the information being attested to. The affidavit from Reverend [REDACTED] does not comply with these basis requirements, and thus is not probative in this matter.

The two affidavits submitted by Mr. [REDACTED] and Ms. [REDACTED] are also deficient. Both affiants provide only general statements indicating how they know the applicant. Neither affiant details where or under what circumstances the affiants met the applicant or provide any details of the circumstances and events surrounding the initial meeting and subsequent interactions. Moreover, each affidavit conflicts with the applicant's indication that she left the United States for one month in 1985, as both affiants indicate they have never gone a week or two without seeing the applicant. Both of these affidavits lack probative value.

A review of the receipts/invoices/deposit slips shows that the majority of these documents are for a limited period of time from 1986 onward. The two receipts/invoices that appear to be dated in December 1981 and in October 1983 show the applicant's address as [REDACTED] in Brooklyn, New York, an address the applicant indicates she first lived at in 1986. Thus the legitimacy of these receipts is in question. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the application. *Id.* at 591.

These affidavits and documents comprise the only evidence of the applicant's residence in the United States from prior to January 1, 1982 through the requisite time period. The statements and affidavits lack credibility and probative value for the reasons noted. The absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, as well as the inconsistencies and contradictions noted in the record, seriously detract 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 inconsistencies in the record and the lack of credible supporting documentation, 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. The appeal will be dismissed.

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