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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:

Office: NATIONAL BENEFITS CENTER

Date: **MAY 06 2008**

MSC-06-054-12753

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:

SELF-REPRESENTED

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 remanded for further action, you will be contacted.

A handwritten signature in black ink, appearing to read "R. Wiemann", written over a light-colored background.

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 Director, National Benefits Center. 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 appeal, the applicant asserts that she has submitted the documentation she possesses after relocating to different places over the past 25 years. The applicant states that the CSS/Newman settlement agreements stipulate that Citizenship and Immigration Services must take into account the passage of time and attendant difficulties in obtaining corroborative documentation of unlawful residence.

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 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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet her burden of establishing continuous unlawful residence in the United States during 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 on November 23, 2005. The applicant signed her application under penalty of perjury certifying that the information she provided is true and correct. At Part #30 of the application, the applicant showed her first residence in the United States to be in South Carolina from December 1981 until August 2004. The applicant failed to provide on the application the complete address for her residence in South Carolina. The applicant left incomplete the street and city sections on this part of the application. At Part #32, the applicant showed that she has been absent from the United States on two occasions. The applicant indicated that she traveled to China for the duration of one month or less in December 1987 and August 2004. At Part #33, the applicant showed her first employment in the United States to be for The Sunless Store in Myrtle Beach, South Carolina from September 2000 until March 2004. Notably, the applicant failed to list any employment during the requisite period. The significant deficiencies in the applicant’s Form I-687 draw into question the overall credibility of her claim of continuous residence in the United States during the requisite period.

The applicant submitted only one corroborating document as evidence of her residence in the United States during the requisite period. The applicant submitted a copy of a People's Savings and Loan Association certificate, dated April 16, 1982. The certificate provides that the applicant holds a savings deposit in the People's Savings and Loan Association. Pursuant to 8 C.F.R. § 245a.2(d)(6), in judging the probative value and credibility of the evidence submitted, greater weight will be given to the submission of original documentation. Had the applicant submitted an original document, it could have been assessed for its probative value and credibility. As a copy, this document is at the outset afforded lesser weight. Furthermore, the credibility of this document is suspect because the section on the certificate for "authorized signature" is blank. Additionally, the certificate indicates that the branch location is "downtown" without providing the address of the branch. Finally, this certificate relates only to the applicant's residence in the United States as of April 16, 1982. The applicant has not provided any other documentation of her residence in the United States during the requisite period.

Moreover, the record contains information that is inconsistent with the applicant's assertion that she has continuously resided in the United States during the requisite period. On May 10, 2007, the applicant filed a Form I-589, Application for Asylum. The applicant signed this application under penalty of perjury, declaring that the application and evidence submitted with it are true and correct. On June 25, 2007, the applicant again signed this application before an asylum officer swearing that the contents of the application and supporting documents are true to the best of her knowledge. At Part A. I. of the application, the applicant showed the date of her first entry into the United States as August 25, 2004. At Part A. II., the applicant showed her date of marriage as October 6, 1983 in TuMen, China. The applicant also showed that she has a child who was born in China on October 15, 1984. At Part A. III., the applicant showed her address during the requisite period as TuMen, Jilin Province, China from November 1983 until July 2004. The applicant also showed her employment during the requisite period as an office clerk with TuMen Railway Construction Engineer Company from January 1980 until October 2003. Hence, the applicant's Form I-589 application is materially inconsistent with her claim of continuous residence in the United States during the requisite period as stated on her Form I-687 application. By submitting two contradictory applications, the applicant has negated her own credibility as well as the credibility of her claim of continuous residence in the United States during the requisite period.

Finally, a Federal Bureau of Investigation (FBI) report based on the applicant's fingerprints reveals that the applicant has been arrested on two occasions and charged with *Prostitution*. The report shows that on July 11, 2005, the applicant was arrested and charged with *Prostitution* in violation of section 529.020 of the Kentucky Penal Code. The Kentucky Penal Code indicates that a conviction for this offense is a class B misdemeanor, which is a term of imprisonment that should not exceed 90 days. Ky. Rev. Stat. Ann. § § 529.020, 532.090 (West 2005). The report shows that on January 18, 2007, the applicant was arrested and charged with *Prostitution or Solicitation of Prostitute* in violation of section 18.2-346 of the Virginia Code. The Virginia Code indicates that a conviction for this offense is a class 1 misdemeanor, which is a term of imprisonment for not more than twelve months. Va. Code Ann. § § 18.2-346, 18.2-11 (West

2007). The report shows that the applicant was convicted of this offense in Prince William County, Virginia, on May 24, 2007. Since applicant has not provided any relevant court documents related to these arrests and the director did not request such documents, the exact disposition of the charges remains unknown.

Pursuant to section 245A(a)(4) of the Act, 8 U.S.C. § 1255a(a)(4), an applicant for temporary resident status must establish that she is admissible to the United States as an immigrant. Under section 212(a)(2)(A)(i)(I) of the Act, an alien is inadmissible if she has been convicted of a crime involving moral turpitude. 8 U.S.C. § 1182(a)(2)(A)(i)(I). Crimes involving moral turpitude are generally defined as an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellow men or to society in general, contrary to the accepted and customary rule of right and duty between man and man. See *Jordan v. De George*, 341 U.S. 223, 71 S.Ct. 703 (1951); *Matter of Serna* 20 I&N Dec. 579, 581 (BIA 1992). A crime involving moral turpitude is based on the offender's evil intent or corruption of the mind. *Matter of Serna* 20 I&N Dec. at 581. The FBI report indicates that the applicant was arrested and charged with *Prostitution* in violation of section 529.020 of the Kentucky Penal Code and *Prostitution or Solicitation of Prostitute* in violation of section 18.2-346 of the Virginia Code. Case law establishes that both prostitution and the solicitation of a prostitute are crimes involving moral turpitude. See *Matter of W-*, 4 I&N Dec. 401 (C.O. 1951). As stated above, the applicant has not provided any relevant court documents related to these arrests, therefore, the exact disposition of the charges remains unknown. If the applicant has been convicted of either of these offenses, she is inadmissible to the United States based on her commission of a crime involving moral turpitude. Section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I). Waivers of inadmissibility are precluded for applicants convicted of such crimes. Section 245A(d)(2)(B)(ii)(I) of the Act, 8 U.S.C. § 1255a(d)(2)(B)(ii)(I).

In conclusion, 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.

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