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U.S. Citizenship
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FILE: [REDACTED]
MSC-06-101-14892

Office: LOS ANGELES

Date: **MAY 19 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: 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.


Robert P. Wiemahn, 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, Los Angeles. 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 her claim of eligibility for temporary resident status and submits affidavits in support of her claim.

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. See 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 his or 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 (CIS) on January 9, 2006.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted the following attestations:

- An affidavit from [REDACTED] in which she stated that she worked with the applicant as a babysitter and that she has known the applicant to be living at [REDACTED], Los Angeles, California since 1980. There is nothing in the record to demonstrate that the affiant's statement with respect to the applicant's address is based upon firsthand knowledge. The affiant does not specifically state the period in which she and the applicant were babysitters or who they worked for. Although not required, there is nothing in the record to demonstrate that the affiant was herself present in the United States throughout the requisite period. The affidavit is significantly lacking in detail and therefore, can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.
- An affidavit from [REDACTED] in which she stated that the applicant lived with her at [REDACTED], Los Angeles, California, from January of 1980 to September of 1990, and that since then they have kept in touch with one another. Here, the affiant fails to submit supporting documentation such as a lease agreement, cancelled checks, or rent receipts to support her statement. There is nothing in the record to demonstrate that the affiant herself

was present in the United States throughout the requisite period. This affidavit lacks supporting documentation, and therefore, can be accorded only minimum weight in establishing that the applicant resided in the United States throughout the requisite period.

- An affidavit from [REDACTED] in which he stated that he has known the applicant since March 18, 1980, and states that they have become good friends and visit each other frequently. Here, the affiant does not explain how or where he met the applicant. There is no evidence to demonstrate that the affiant's statements are based upon first hand knowledge of the applicant's circumstances throughout the requisite period. He fails to show the frequency in which he saw the applicant during the requisite period. There is nothing in the record to demonstrate that the affiant himself was present in the country throughout the requisite period. The affidavit is significantly lacking in detail and therefore, can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

In denying the application the director noted that the affiant's statements were insufficient to establish the applicant's eligibility for the immigration benefit sought, and that the affidavits were not verifiable.

On appeal, the applicant states that she has lived in the United States since 1981 and that she is submitting additional affidavits to substantiate her claim.

On appeal, the applicant submits the following attestations:

- An affidavit from [REDACTED] in which he states that he has personal knowledge of the applicant's presence in the United States since January of 1980 and that the applicant lived at [REDACTED] St, Los Angeles, California for nine years with his sister as a babysitter. There is nothing in the record to demonstrate that this statement is based upon the affiant's firsthand knowledge of the events and circumstances surrounding the applicant presence in the United States during the requisite period. The affiant fails to specify how he met the applicant and the degree to which he maintained contact with the applicant throughout the requisite period. There has been no evidence submitted to demonstrate that the affiant himself was present in the United States throughout the requisite period. The affidavit is significantly lacking in detail and therefore, can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.
- An affidavit from [REDACTED] in which she states that she has personal knowledge of the applicant's presence in the United States since January of 1980 and that the applicant lived at [REDACTED] Los Angeles, California for nine years with her sister as a babysitter. There is nothing in the record to demonstrate that this statement is based upon the affiant's firsthand knowledge of the events and circumstances surrounding the applicant presence in the United States during the requisite period. The affiant fails to specify how she met the applicant and the degree to which she maintained contact with the applicant throughout the requisite period. There has been no evidence submitted to demonstrate that the affiant herself was present in the

United States throughout the requisite period. The affidavit is significantly lacking in detail and therefore, can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

- An affidavit from [REDACTED] in which she states that she has known the applicant since December of 1982, that they met at a birthday party and became good friends, and that they talk on the telephone and attend family gatherings throughout the year. The affiant has failed to provide any relevant and verifiable testimony, such as the applicant's place of residence in this country, to corroborate the applicant's claim of residence in the United States since prior to January 1, 1982. There is nothing in the record to demonstrate that the affiant herself was present in the United States throughout the requisite period. The affidavit is lacking in detail and therefore, can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

In the instant case, the applicant has not provided sufficient, probative evidence of her claimed continuous unlawful residence in the United States since prior to January 1, 1982. After giving due weight to the evidence submitted by the applicant, it is determined that she has submitted attestations that are significantly lacking in detail and therefore, can be accorded only minimal weight in establishing that she resided in the United States throughout the requisite period. The applicant has failed to submit corroborating evidence to substantiate her claim of continuous unlawful residence in the United States since January 1, 1980. She has not submitted any school records or medical records to demonstrate her presence in this country as a fourteen-year-old child.

The absence of sufficiently detailed 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 for the requisite period 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.