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

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[redacted]

FILE: [redacted] Office: LOS ANGELES Date: OCT 01 2008

MSC 05 313 13600

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. 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, 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 was statutorily eligible to file for the benefit herein sought as she was not discouraged by service employees from filing for amnesty during the eligibility period for amnesty, or that she had continuously resided in the United States in an unlawful status for the duration of the requisite period. Here, the director adjudicated the Form I-687 application on the merits. As a result, the director is found not to have denied the application for class membership. 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 did not understand the questions asked of her by the immigration officer during her eligibility interview, and that she misunderstood the statements of her interpreter at that interview. The applicant states that she was discouraged from filing her Form I-687 because she had departed the country briefly in 1987, that she has been continuously present in the United States since 1980 except for a single brief exit in 1987, that she is qualified under Section 245A of the Act and the CSS/NEWMAN settlement agreements, and that her application for temporary resident status should be granted.

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 245(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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

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 demonstrate that she resided in the United States for the duration of the requisite period. Here, the applicant submitted the following documentary evidence:

Statements

- The applicant submitted a sworn statement to an immigration officer on November 7, 2006. That statement is, however, submitted in Spanish without an English translation. It will, therefore, not be considered in this proceeding.

  The applicant provided answers under oath to questions posed by an immigration officer on July 20, 1990. At that time, the applicant states that: she first entered the United States on January 15, 1981 without inspection; she has continuously resided in the United States in

unlawful status since prior to January 1, 1982; and she departed the United States on May 20, 1987 to visit her mother and returned to this country on June 10, 1987 without inspection.

- issued an undated and unsworn statement on the applicant's behalf stating that the applicant had been working at [redacted] from January of 1981 until "the present." The statement provided no additional information.

- issued an undated and unsworn statement on the applicant's behalf stating that the applicant had been working at [redacted] from March of 1984 until "the present." The statement provided no additional information.

- [redacted] issued two unsworn statements on the applicant's behalf. One is undated and states that the applicant had been working at [redacted] from January of 1981 until "the present." The second statement is dated July 20,1990 and states that the applicant had been working at [redacted] from January of 1983 until "the present." Neither statement provides additional information. Further, there is no evidence in the record to explain the discrepancy between the two dates noted in [redacted] statements.

- [redacted] issued an unsworn an undated statement stating that he has personally known and been associated with the applicant in the United States, and that he has personal knowledge that the applicant has resided at [redacted] from January of 1983 until July of 1990. [redacted] states that he has known the applicant for a "long time" and that she is a good person. The statement provides no additional information.

- issued the following statements on behalf of the applicant:

One statement is unsworn and undated, stating that he personally knows and is acquainted with the applicant. He states that he has personal knowledge that the applicant has resided at [redacted] from January 15, 1981 until the "present." The statement provides no additional information.

A second statement submitted by [redacted] is sworn to and dated August 7, 1990. In that statement, the affidavit form states that "I, [redacted] swear under penalty of perjury that the following facts are true to the best of my knowledge: left the U.S.A. approximately from: ~~5-20~~-87 to 6-10-87. I declare that the above given statement is true to the best of my knowledge." The notarized statement, however, is signed by [redacted] There is no explanation as to the inconsistency between the name of the person making the sworn declaration [redacted] and the name of the person signing the statement [redacted] The statement provides no additional information.

A third statement submitted by [redacted] sworn to and dated October 4, 1990. In that statement [redacted] states that he personally knows and is acquainted with the applicant. He states that he has personal knowledge that the applicant has resided in Los Angeles, CA from January of 1981 until the present date. The applicant states that he is aware of the applicant's residence because he met the applicant at his house when she came to live with him.

The AAO notes that in the statements given by [redacted] and [redacted] (two statements), the declarants state that the applicant has "worked" at [redacted] for certain time frames. Other witness statements indicate that the applicant lived at that address, but do not state that she worked at that address. These discrepancies are not explained in the record.

Other Evidence

The applicant provided three airmail envelopes addressed to her at [redacted] bearing the following post mark dates: July 15, 1981; January 10, 1982; and February 3, 1983. These envelopes provide limited evidence, and indicate that the applicant may have been present at the aforementioned address on or about those limited dates.

Although the applicant has submitted unsworn statements from several individuals, and three envelopes addressed to her in Los Angeles, CA in the years 1981, 1982 and 1983, the applicant has not provided any other evidence of residence in the United States during the requisite period, and has not established her continuous unlawful residence in the United States for the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality; an applicant must provide evidence of eligibility apart from his or her own testimony; and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility.

The referenced witness statements state generally how the witnesses know the applicant, and that the applicant has resided and/or worked in the United States for the requisite period, or some lesser portion of the requisite period. The witness statements provide no additional relevant information. None of the witness statements provide concrete information, specific to the applicant and generated by the asserted associations with her, that would reflect and corroborate the extent of those associations and demonstrate that they were a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the statements. To be considered probative and credible, witness statements must do more than simply state that a witness knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Upon review, the AAO finds that, individually and together, the witness statements do not indicate that their assertions are probably true. Therefore, they have little probative value.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he 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.