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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, D.C. 20529-2090



U.S. Citizenship  
and Immigration  
Services

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[Redacted]

FILE:

[Redacted]

Office: NEW YORK

Date:

MSC 06 007 11887

**JAN 08 2010**

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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter 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.

Perry Rhew  
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, New York, New York, and 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, counsel asserts that the Service officer refused to contact the affiants who provided affidavits to support the applicant's application. Counsel asserts that the applicant "maintains the fact that she never traveled outside United States since she came in in [sic]1981. Petitioner did not understand the question that was contained in Page 12, question #1 of Form I-687." Counsel asserts that the applicant did not misrepresent any material fact.

The applicant's Freedom of Information Act request was processed on June 1, 2009.

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 presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the alien attempted to file a completed Form I-687 application and fee or was caused not to timely file, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. Paragraph 11, page 6 of the CSS Settlement Agreement and paragraph 11, page 10 of the Newman Settlement Agreement.

An alien applying for adjustment of status 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. *See* 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 including affidavits 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.* 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 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.

In an attempt to establish continuous unlawful residence in the United States since prior to January 1, 1982, the applicant submitted:

- An affidavit notarized August 30, 2005, and a declaration from [REDACTED] who indicated that the applicant was in his employ as a live-in Nanny from 1981 to 1989. The affiant indicated that he was residing at [REDACTED] during the requisite period.
- An affidavit from [REDACTED] who indicated she met the applicant “at a family picnic between 1981-1988 at [REDACTED].”
- Affidavits from [REDACTED] who indicated that he first met the applicant at [REDACTED] in 1981. The affiant indicated that he was a part-time plumber at the applicant’s building. The affiant indicated the applicant attempted to file an application for legalization in 1988, but was turned away.

- An affidavit from [REDACTED] who indicated that he met the applicant in 1981 on the subway. The affiant indicated that he and the applicant became friends and they went out to dinner, parties and shopping together.

At the time of her interview on April 13, 2006, the applicant indicated that she entered the United States in 1981 with her parents and has never departed the United States since that time. The applicant indicated that she resided alone at [REDACTED] from 1981 to 1989.

On May 8, 2007, the director issued a Notice of Intent to Deny, which advised the applicant that the affidavits submitted were neither credible nor amenable to verification.

The director, in issuing her Notice of Intent to Deny, also noted that it appeared the applicant had misrepresented a fact to gain a benefit based on her claim to have never departed the United States since her entry. The director, however, treated the applicant as a class member in adjudicating the Form I-687 application on the basis of whether the applicant had established continuous residence in the United States for the requisite period. The adjudication of the application as it relates to the applicant's claim of continuous residence in the United States since prior to January 1, 1982 shall continue.

The applicant, in response, reasserted the veracity of her claim to have resided in the United States since January 1981. The applicant indicated that the affidavits included telephone numbers of all the affiants; however, none of them were contacted. The applicant indicated, "since 1981 to 2007, I have not traveled out of United States." The applicant submitted:

- An affidavit from [REDACTED] who indicated that he has known the applicant since she has been residing in New York City in 1981. The affiant indicated that the applicant has not traveled outside the United States since 1981.
- An affidavit from [REDACTED] who indicated he has known the applicant since she arrived in the United States in 1981. The affiant indicated that the applicant has not traveled outside the United States since 1981
- An additional affidavit from [REDACTED], who indicated that he has known the applicant since she has been residing in New York City in 1981. The affiant indicated that he and the applicant have been members of the same church since 1981. The affiant indicated that he was a neighbor of the applicant at [REDACTED] before he moved to his present address at [REDACTED]
- An additional affidavit from [REDACTED] who attested to the applicant's residence in the United States since 1981. The affiant indicated that he and the applicant were neighbors at [REDACTED] for more than ten years. The affiant indicated that to the best of his knowledge, the applicant had not traveled outside of the United States since 1981.

The director, in denying the application, noted that attempts to contact [REDACTED] and [REDACTED] and [REDACTED] proved unsuccessful. The director also noted that an attempt to contact [REDACTED] was also unsuccessful as "a recorder stated that the customer is unavailable." The director determined that the applicant had failed to submit sufficient credible evidence establishing her continuous residence in the United States since prior to January 1, 1982, and denied the application on June 12, 2007.

The statements issued by the applicant and counsel have been considered. However, the evidence of record submitted does not establish that the applicant was already in the United States before January 1, 1982, and that she continuously resided since that date through the date she filed her application, as she has presented contradictory and inconsistent documents, which undermines her credibility.

[REDACTED] in his initial affidavit and declaration, indicated that the applicant was in his employ as "a live-in nanny" and he resided at [REDACTED] during the requisite period. However, in his subsequent affidavit, the affiant made no claim to having employed the applicant, but rather he was "a neighbor" of the applicant at [REDACTED] and he and the applicant have been members of the same church since 1981. Furthermore, the applicant, on her Form I-687 application, did not claim: 1) any employment during the requisite period; 2) list any affiliation or association with a religious organization; 3) residence at [REDACTED] during the period [REDACTED] claimed to have employed her as a live-in nanny.

[REDACTED], in his initial affidavit, indicated that he met the applicant at [REDACTED] in 1981 where he was a part-time plumber. In his subsequent affidavit, the affiant amended his statement to indicate that he was a neighbor of the applicant at the same building, [REDACTED] for more than ten years.

As conflicting statements have been provided, it is reasonable to expect an explanation from the affiants in order to resolve the contradictions. However, no statement from either affiant has been submitted to resolve their contradicting affidavits.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I. & N. Dec. 582 (BIA 1988).

While an application should not be denied solely because the applicant has only submitted affidavits to establish continuous residence in the United States for the duration of the requisite period, the submission of affidavits alone will not always be sufficient to support the applicant's claim. 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). Casting doubt to the applicant's claim

that she resided in the United States continuously during the entire requisite period is the fact that the affidavits from the remaining affiants do not provide detailed accounts of an ongoing association establishing a relationship under which the affiants could be reasonably expected to have personal knowledge of the applicant's residence, activities and whereabouts during the requisite period. To be considered probative, an affiant's affidavit must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. The affidavit must contain sufficient detail, generated by the asserted contact with the applicant, to establish that a relationship does in fact exist, how the relationship was established and sustained, and that the affiant does, by virtue of that relationship, have knowledge of the facts asserted. The affidavits from the affiants do not provide sufficient detail to establish that they had an ongoing relationship with the applicant that would permit them to know of the applicant's whereabouts and activities throughout the requisite period.

Given the credibility issues arising from the documentation provided by the applicant, it is determined that the applicant has not met her burden of proof. In addition, 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 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 applicant's reliance upon documents with minimal probative value, it is concluded that the evidence submitted fails to establish continuous residence in an unlawful status in the United States during the requisite period.

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.