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FILE:

MSC 05 257 11565

Office: LOS ANGELES

Date:

AUG 07 2007

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. 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.

  
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, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director determined the applicant had not demonstrated that she had continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that she attempted to file a Form I-687, Application for Status as a Temporary Resident, with the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS) in the original legalization application period of May 5, 1987 to May 4, 1988. Therefore, the district director determined that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and denied the application.

On appeal, the applicant asserts that she has submitted sufficient evidence, including credible affidavits, to corroborate her claim of continuous residence in the United States during the requisite period.

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 Immigration and Nationality Act (Act), 8 U.S.C. § 1255a(a)(2).

An applicant applying for adjustment to temporary resident status must 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).

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. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

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 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 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 (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 from prior to January 1, 1982 through the date she attempted to file a Form I-687 application with the Service in the original legalization application period of May 5, 1987 to May 4, 1988. Here, the submitted evidence is not relevant, probative, and credible.

The record shows that the applicant submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on June 14, 2005. At part #30 of the Form I-687 application, where applicants are instructed to list all residences in the United States since first entry, the applicant indicated that she resided at “[redacted] Long Island City, New York” from May 1981 to June 1984, at “[redacted] Long Island City, New York” from July 1984 to June 1987, and at “[redacted] Long Island City, New York” from July 1987 to July 1989.

At her interview with a CIS officer on March 1, 2006, the applicant stated that she first entered the United States without inspection from Mexico in May 1981.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted an affidavit dated April 3, 2005, from [redacted] [redacted] stated that he had known the applicant since 1981, when he met the applicant at his girlfriend's

house. However, [REDACTED] did not provide specific verifiable information such as the applicant's addresses in the United States during the requisite period.

The applicant also submitted an affidavit dated April 1, 2005, from [REDACTED] [REDACTED] stated that she met the applicant in 1987 when the applicant started working for her selling books on the street. [REDACTED] did not provide any verifiable information such as the applicant's addresses in the United States during the requisite period.

The applicant included an affidavit dated April 8, 2005, from [REDACTED] [REDACTED] stated that he met the applicant in 1985 at a friend's birthday party. However, [REDACTED] did not provide any information regarding the frequency of his contact with the applicant or the applicant's addresses in the United States during the requisite period.

On March 3, 2006, the district director issued a notice informing the applicant of her intention to deny the application because the applicant had not submitted sufficient evidence to corroborate her claim of continuous residence in the United States during the requisite period. The district director granted the applicant 30 days to submit additional evidence to corroborate her claim.

The applicant, in response, reiterated her claim that she arrived in the United States in May 1981 and had resided continuously in the United States since that time. She submitted a second affidavit dated March 29, 2006, from [REDACTED]. [REDACTED] repeated his statement that he met the applicant in 1981 at his girl friend's house and "since then we always keep in touch." [REDACTED] did not provide any information regarding the frequency of his contact with the applicant or her addresses in the United States during the requisite period. [REDACTED] included photocopies of five photographs of himself and the applicant at what appears to be a party. However, there is nothing in any of these photos that would date them to a specific month and year.

The applicant included an affidavit dated February 27, 2006, from [REDACTED] [REDACTED] stated that the applicant rented an apartment located at "[REDACTED] Astoria, New York" from him in 1981. [REDACTED] stated, "[REDACTED] lived fill [sic] years in my building and she was a great tenant." It is not clear from this sentence how long [REDACTED] intended to indicate the applicant resided in an apartment in his building.

The applicant also included an affidavit dated March 20, 2006, from [REDACTED] [REDACTED] stated that the applicant worked for him and his wife, [REDACTED] selling books on the street in 1987. [REDACTED] did not specify how long the applicant worked for him and his wife, nor did he provide the applicant's addresses in the United States while she was employed selling books for him and his wife.

[REDACTED] provided a photocopy of a receipt from the New York States Department of Taxation and Finance relating to his sale of a motor vehicle on November 13, 1986. [REDACTED] also submitted a photocopy of a shipping invoice dated July 28, 1993, from [REDACTED], for a shipment of two boxes of books for a total purchase price of \$1,140.00 and a billing statement

from [REDACTED], dated April 30, 1992. [REDACTED] also provided photocopies of pictures of the applicant apparently selling books on the street and also photos of [REDACTED] and the applicant in social situations. Handwritten notations date these pictures in 1987, but there is nothing in the pictures that would indicate the date they were taken.

The applicant submitted an affidavit dated March 18, 2006, from [REDACTED]. [REDACTED] stated that the applicant had been working part-time for him as a housekeeper since 1986. However, he did not provide any information as to how he met the applicant or the applicant's addresses in the United States during the requisite period.

The applicant also submitted a letter dated February 17, 2006, from [REDACTED] Pastor of Our Lady of Lourdes Roman Catholic Church, located at 9 [REDACTED], Queens Village, New York. [REDACTED] stated that the applicant was a member and regular participant in the religious services in the 1980's when he established permanent religious services for Brazilians in the Greater New York area.

Pursuant to 8 C.F.R. § 245a.2(d)(3)(v), an applicant may submit an attestation by churches, unions, or other organizations to his or her residence which: (A) Identifies the applicant by name; (B) Is signed by an official (whose title is shown); (C) Shows inclusive dates of membership; (D) States the address where the applicant resided during the membership period; (E) Includes the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; and, (G) Establishes the origin of the information being attested to. The letter from [REDACTED] does not meet this standard. He did not provide the applicant's inclusive dates or membership, nor did he provide the applicant's address(es) during the membership period.

The applicant also submitted a photocopy of a Form I-94, Arrival/Departure Record, indicating that she was admitted to the United States at New York, New York, on January 9, 1988, as a nonimmigrant B-2 visitor with stay authorized to July 8, 1988, along with photocopies of two money transfer receipts dated February 3, 1988 and March 1, 1988. These documents only reflect the applicant's presence in the United States in January and February 1988.

On appeal the applicant asserts that the affidavits she has submitted are sufficient to corroborate her claim of continuous residence in the United States during the requisite period. She requests that the district director's decision be reversed and her application be approved.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States prior to January 9, 1988, and has submitted attestations from seven people concerning that period, all of which lack sufficient detail to corroborate the applicant's claim.

The absence of sufficiently detailed supporting 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 contradictory statements on his applications and

his 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 from prior to January 1, 1982 through the date she attempted to file a Form I-687 application 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.