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

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FILE: [REDACTED]
MSC-05-256-13046

Office: NEW YORK

Date: DEC 12 2007

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. 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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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. 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, on June 13, 2005. The director determined that the applicant had not submitted sufficient evidence to overcome the grounds for denial expressed in the Notice of Intent to Deny (NOID). In the NOID, the director concluded that the applicant failed to submit credible documentation sufficient to meet her burden of proof by a preponderance of the evidence that she resided continuously in the United States for the requisite periods.

On appeal, the applicant attempted to explain her inability to obtain additional evidence and provided photographs of an affiant.

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).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "until the date of filing" shall mean until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file. 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 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. 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 Immigration and Naturalization Service (INS) 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 includes the Form I-687 application and Form I-687 Supplement, CSS/Newman Class Membership Worksheet, submitted by the applicant to Citizenship and Immigration Services (CIS) on June 13, 2005. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant showed her only address during the requisite period to be at [REDACTED], New York from November 1981 to November 1999.

The applicant also provided three affidavits. The affidavit from [REDACTED], MD, states that the applicant has been a patient in Dr. [REDACTED] internal medicine practice since 1981. Dr. [REDACTED] provided a New York address for his practice, but provided no telephone number. Since the affidavit is not accompanied by medical records or other supporting documentation, it is found to lack sufficient detail.

The affidavit from [REDACTED] states that she met the applicant in 1981 and has kept in touch with her since then. This affidavit fails to specifically state that the applicant resided in the United States throughout the requisite period.

The applicant also provided an affidavit from Cornelius Scott. This affidavit also fails to state that the applicant resided in the United States throughout the requisite period.

In denying the application, the director determined that the applicant had not submitted sufficient evidence to overcome the grounds for denial expressed in the NOID. The director also erroneously stated that Ms. [REDACTED] declaration cannot be granted any probative value as there is no evidence that she was present in the United States during the statutory period, nor was her photo identification included. It is noted that an affiant is not required to provide documentation of his or her identity or presence in the United States during the requisite period. In the NOID, the director concluded that the applicant failed to submit credible documentation sufficient to meet her burden of proof by a preponderance of the evidence that she resided continuously in the United States for the requisite periods.

On appeal, the applicant attempted to explain her inability to obtain additional evidence. She stated that her documents were destroyed in a fire in 1999 and was unable to get her medical records from 1981. The applicant failed to include any documentation confirming that the fire occurred. This explanation is insufficient to overcome the lack of documentation, particularly since the applicant was able to obtain an affidavit from her physician but he also failed to provide copies of medical records or a reasonable explanation for their absence.

The applicant also explained that Ms. [REDACTED] is unable to provide photo identification because her documents prior to 1981 are in Florida with her daughter. Ms. [REDACTED] resides in New York and would need more time to retrieve her documents from Florida. More than three months have passed since the applicant filed her appeal. Therefore, the record will be considered complete. The applicant's explanation for her lack of additional evidence regarding Ms. [REDACTED] is unreasonable under the circumstances. Specifically, Ms. [REDACTED] documents "prior to 1981" are not relevant to the issue of whether the applicant resided in the United States from prior to January 1, 1982 until the date she attempted to file or was discouraged from filing her application for temporary residence. In addition, Ms. [REDACTED] identified her occupation as a registered nurse in her affidavit. It is unreasonable that she would be able to engage in this occupation without having some form of photo identification. Nevertheless, an affiant is not required to provide documentation of his or her identity or presence in the United States during the requisite period. As stated above, 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 applicant also provided what she identified as photographs of Ms. [REDACTED] prior to 1981. These photographs are found not to be relevant to the issue of whether the applicant resided in the United States continuously during the requisite period.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period, and has submitted affidavits that lack sufficient detail or fail to confirm the applicant resided in the United States throughout the requisite period.

Specifically, the affidavit from Dr. [REDACTED] lacks sufficient detail. The affidavits from Ms. [REDACTED] and Mr. [REDACTED] fail to confirm the applicant resided in the United States throughout the requisite period.

The absence of sufficiently detailed and consistent 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 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.