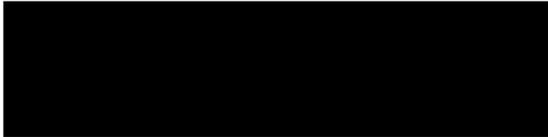


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41

FILE: [REDACTED]  
MSC-05-308-12003

Office: NEW YORK

Date: **NOV 28 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 "D. King" or similar, written over the typed name of the Chief of the Administrative Appeals Office.

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

The 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. Specifically, in her Notice of Intent to Deny (NOID), the director noted that applicant, who claims to have entered the United States when she was six (6) years old, had no contemporaneous evidence that she had resided in the United States during the requisite period, such as school records, letters or cards from family or friends and no medical records. The director went on to note that the affidavits submitted by the applicant in support of her application did not contain proof that the affiants resided in the United States nor that they had direct personal knowledge of the events and circumstances of the applicant's residency. The director granted the applicant thirty (30) days within which to submit additional evidence in support of her application. The director noted that her office received two additional affidavits from the same affiants who had provided the applicant with previous affidavits. However, the director still found these affidavits lacking. Therefore, the 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 submits updated affidavits in an attempt to meet her burden of proving by a preponderance of the evidence that she resided continuously in the United States for the duration of 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) and 8 C.F.R. § 245a.2(b)(1).

Applicants who are eligible for adjustment to temporary resident status are those who establish that they entered the United States prior to January 1, 1982, and who have thereafter resided continuously in the United States in an unlawful status, and who 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, during the original legalization application period of May 5, 1987 to May 4, 1988, 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 applicant 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. 8 C.F.R. § 245a.2(d)(5).

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 August 4, 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 first address in the United States to be on

Linden Blvd. in Brooklyn, New York. The applicant did not associate an address with this street nor did she indicate when she resided at this address. The showed that she then lived at 398 10<sup>th</sup> Street in Brooklyn. Again, the applicant did not indicate dates associated with this address of residence. At part #33, where the applicant was asked to list all of her employment since she entered the United States, the applicant showed that she was self-employed as a consultant. She did not indicate dates that were associated with this employment but indicated that this continues to be her employment.

The applicant has the burden of proving by a preponderance of the evidence that she has resided in the United States for the requisite period. 8 C.F.R. § 245a.2(d)(5). To meet her burden of proof, an applicant must provide evidence of eligibility apart from her own testimony. 8 C.F.R. § 245a.2(d)(6). The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that an applicant may submit to establish proof of continuous residence in the United States during the requisite period. This list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts or letters. An applicant may also submit any other relevant document pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

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

- A statement from [REDACTED] dated November 27, 2005. In this statement, [REDACTED] asserts that he is aware that the applicant entered the United States before January 1, 1982 and that she resided continuously for the duration of the requisite period. Here, [REDACTED] fails to indicate how or where he met the applicant, what her address was during the requisite period or what the nature of his relationship with the applicant is. He fails to indicate how he knows that the applicant resided continuously in the United States for the duration of the requisite period or to provide evidence that he himself was present in the United States during that period of time. Because of its significant lack of detail, this affidavit can only be afforded very minimal weight in establishing that the applicant resided continuously in the United States for the duration of the requisite period.
- A subsequently submitted statement from [REDACTED] stating that he is a citizen of the United States and providing his address and place of employment during the requisite period. [REDACTED] also submitted a photocopy of his passport as proof of his identity.
- A statement from [REDACTED] PE that is identical to that supplied by [REDACTED]. This statement is dated November 30, 2005. In this statement, [REDACTED] fails to indicate how or where he met the applicant, what her address was during the requisite period or what the nature of his relationship with the applicant is. He fails to indicate how he knows that the applicant resided continuously in the United States for the

duration of the requisite period or to provide evidence that he himself was present in the United States during that period of time. Because of its significant lack of detail, this affidavit can only be afforded very minimal weight in establishing that the applicant resided continuously in the United States for the duration of the requisite period.

- A subsequently submitted statement from [REDACTED] who indicates his address during the requisite period and shows his places of employment during the requisite period. With this statement, [REDACTED] has submitted a photocopy of his passport as proof of his identity. This statement was signed on April 29, 2006.

The record also contains a marriage certificate that indicates that on July 22, 2006, the applicant married [REDACTED] and now lives with him at his address of residence.

Thus, on the application, which the applicant signed under penalty of perjury, she showed that she resided and worked in the United States from an unspecified point in time until the present. She provided addresses in the United States but did not indicate when she lived at them. She provided attestations from two (2) individuals that were significantly lacking in detail as proof of her residence during the requisite period. Though the individual was six (6) years old at the time she claims to have entered the United States she has not provided any contemporaneous evidence of having resided in the United States after she entered.

In denying the application the director noted the above, and reiterated that evidence submitted by the applicant as proof that she resided in the United States during the requisite period was insufficient to meet her burden of proving by a preponderance of the evidence that she did so.

On appeal the applicant submits the following new evidence in support of her application:

- An undated photograph of herself with [REDACTED] who she states is her uncle. This photograph is taken in front of the White House.
- A photograph of herself in a Mexican restaurant, which she states was taken in New Jersey in the 1980's. It is not indicated when in the 1980's this photograph was taken.
- A new statement from [REDACTED] in which he states that he is her uncle. He states that the applicant has good moral character. [REDACTED] fails to establish where the applicant lived during the requisite period, or with whom she lived. This is significant as she has stated she did not live with her parents and would have been six (6) years old when she entered the United States. Because of its significant lack of detail, this statement can be afforded very little weight in establishing that the applicant resided continuously in the United States for the duration of the requisite period.
- A new statement from [REDACTED] in which he states that he is now married to the applicant. In this statement he asserts that he is aware that the applicant entered the

United States in 1981. He fails to explicitly indicate how he knows that she did so. He states that the applicant's great aunt applied for amnesty in 1987 but was turned away. He fails to provide a name of this great aunt or an address at which the applicant lived or to specify whether the applicant lived with this great aunt. He goes on to say that he was the applicant's advisor in 1990 when he went as a member of a US mission to [REDACTED] where the applicant was living at the time. [REDACTED] asserts that the applicant will be an asset to the United States. Though this statement contains details regarding [REDACTED] interactions with the applicant, he does not provide evidence in the statement that it is personally known to him that the applicant resided continuously in the United States for the duration of the requisite period. The one address that he does provide for the applicant is not one that she has indicated that she ever lived at on her Form I-687. Therefore, because of this and because this statement lacks information regarding when and where the applicant resided in the United States during the requisite period, this statement can be afforded only very minimal weight in establishing that the applicant resided continuously in the United States for the duration of the requisite period.

As is stated above, 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). The applicant has been given the opportunity to satisfy her burden of proof with a broad range of evidence pursuant to 8 C.F.R. § 245a.2(d)(3).

However, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period, and has submitted attestations from only two (2) people concerning that period. She did not submit any contemporaneous evidence or any evidence from additional affiants to establish that she had maintained continuous residence in the United States.

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 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.