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FILE: [REDACTED]
MSC 06 003 14147

Office: LOS ANGELES

Date: SEP 18 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.

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, California, 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 reiterates 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 October 3, 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 indicated that she resided at [REDACTED] Rosemead, California" from February 1981 to February 1985 and at [REDACTED] Artesia, California" from February 1985 to July 1997. At part #32, where applicants are instructed to list all absences outside the United States since initial entry, the applicant indicated that she was in Taiwan due to an emergency from December 1984 to January 1985.

At her interview with a CIS officer on April 26, 2006, the applicant stated that she first entered the United States without inspection from Canada in February 1981 with her husband and children. She further stated that she was in Taiwan for about 30 days, from December 1984 to January 1985.

The record contains a photocopy of a visa page from the applicant's Taiwanese passport bearing a United States nonimmigrant B-2 visa issued in Hong Kong, China, on October 23, 1984. The facing page of the applicant's passport bears a United States immigration stamp indicating that the

applicant and her two children were admitted to the United States on January 20, 1985, as nonimmigrant B-2 visitors. The record also contains a photocopy of the applicant's Form I-94, Arrival/Departure Record, indicating that she was admitted to the United States as a nonimmigrant visitor on January 20, 1985, with authorization to remain in the United States until July 20, 1985. The photocopy of the reverse side of the applicant's Form I-94 further indicates that she was granted a change of status from B-2 to L-2, nonimmigrant spouse of an intracompany transferee, at Los Angeles, California, on July 26, 1985, and her authorized stay was extended to July 15, 1988. On June 12, 1988, she was granted a change of nonimmigrant status from L-2 to F-1, nonimmigrant student, and her authorized stay in the United States was extended for the duration of her studies.

On December 12, 1995, the applicant's brother, [REDACTED] a naturalized United States citizen, filed a Form I-130, Petition for Alien Relative, on the applicant's behalf seeking to classify her as the sister of a United States citizen. The applicant indicated at Section C, Part #14, of the Form I-130 that she arrived in the United States on January 20, 1985. The Director of the California Service Center approved the petition on February 29, 1996. On October 14, 1997, the applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status. The applicant indicated on the Form I-485 that she last arrived in the United States on January 20, 1985. The applicant indicated on the accompanying Form G-325A, Biographic Information, dated October 3, 1997, that she lived in Taipei, Taiwan, from October 1984 to January 1985.

The district director denied the application on May 25, 2006, because the applicant failed to submit any evidence to corroborate her claim of continuous residence in the United States during the requisite period. The district director specifically noted in the denial decision that the applicant indicated on the Form G-325A that she was in Taiwan from October 1984 to January 1985. The district director further noted that the applicant's nonimmigrant B-2 visa was issued in Taipei, Taiwan, on October 23, 1984, and she was admitted to the United States as a nonimmigrant B-2 visitor on January 20, 1985. Therefore, the district director determined that the applicant had not resided continuously in the United States throughout the requisite period and denied the application.

On appeal the applicant reiterates her claim of continuous residence in the United States during the requisite period. She asserts that the information reported on the Form G-325A was incorrect "because the dates are wrong." However, the applicant has not submitted any evidence to corroborate her assertion. Simply going on record without supporting documentary evidence is not sufficient for meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-85 period other than her own testimony. Furthermore, there is a contradiction in the applicant's testimony on the G-325A and her testimony on the Form I-687 and during the legalization interview. The applicant indicated on the Form G-325A that she was in Taiwan from October 1984 to January 1985, but she indicated on the Form I-687 and during her legalization interview that she was only in Taiwan from December 1984 to January 1985, a period of approximately 30 days. The evidence of record supports a conclusion that the

applicant first entered the United States on January 20, 1985, not in 1981 as the applicant claimed on the Form I-687 and during her legalization interview.

The absence of 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 absence of supporting documentation and the applicant's contradictory statements on her applications and during her legalization interview, 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.