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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 05 201 34377

Office: NEW YORK

Date:

SEP 24 200

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:



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. Wiemanh".

Robert P. Wiemanh, 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 is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined the applicant had failed to submit documents that would constitute a preponderance of evidence as to her residence in the United States. As a result, the director denied the application.

On appeal, the applicant explained that she had signed a sworn statement without understanding it, because of her difficulties with the English language. In response to issues the director raised in relation to her class membership, the applicant stated that she had filled out the Form I-687 Supplement CSS/Newman LULAC class membership worksheet correctly. Lastly, she expressed an interest in submitting additional documentation in support of her application.

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 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 applicant 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 applicant 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 and 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 shows that the applicant submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to Citizenship and Immigration Services (CIS) on April 20, 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 listed her only residence during the requisite period as 25-62 [REDACTED] from September 1981 to June 1993. At part #31 where applicants were asked to list all affiliations or associations, clubs, organizations, churches, unions, businesses, etc., the applicant listed nothing.

The applicant submitted multiple declarations in support of her application. In the declaration containing her notarized signature, [REDACTED] stated that the applicant lived with her at the address listed on Form I-687 from September 1981 to June 1993. The declarant stated that she and the applicant shared rent and utility bills. However, the declarant did not include copies of any rent receipts or utility bills in her name or explain why this form of documentation was unavailable. In addition, the declarant failed to explain the manner in which she became acquainted with the applicant. As a result, this declaration is found to be lacking in detail. Although not required, the declarant failed to provide documentation of her identity or presence in the United States during the requisite period.

The applicant submitted a form to gather information for a third party declaration, prepared by [REDACTED]. In the form, [REDACTED] stated that the approximate date when he first met the applicant was 1986. However, [REDACTED] failed to confirm the applicant resided in the United States during the requisite period. This form is unsigned and, as a result, carries limited evidentiary weight.

The applicant submitted another form to gather information for a third party declaration, prepared by [REDACTED] also failed to confirm the applicant resided in the United States during the requisite period. This form is also unsigned and, as a result, carries limited evidentiary weight.

A signed and notarized declaration from [REDACTED] states that the applicant has been known to [REDACTED] since 1982. [REDACTED] stated, "[The applicant] often used to visit me and had [conversations] on different matters and affairs." Again, this declaration fails to confirm the applicant resided in the United States during the requisite period.

The signed and notarized affidavit from [REDACTED] states that [REDACTED] has known the applicant since 1982 and has personal knowledge that she left the United States in June 1987 and returned in July 1987. This affidavit fails to specifically confirm the applicant resided in the United States continuously throughout the requisite period.

The signed and notarized declaration of [REDACTED], dated February 12, 1999, states that the applicant has been known to the declarant since 1983. The declarant also stated that the applicant entered the United States before January 1, 1982 and has been residing continuously in an unlawful manner until "today." The declarant failed to provide any information regarding his relationship to the applicant, including the manner in which they became acquainted and the nature of their relationship. In addition, the declarant failed to explain how he can confirm the applicant's residence since prior to January 1, 1982 when he also states he did not know the applicant until 1983. As a result, this declaration is found to be lacking in detail.

The signed and notarized declaration of [REDACTED], President of Bangladesh Humanity & Environment Council & Civil Patrol Group (BHEC), states that the applicant has been an active member of BHEC since April 1983. The declaration states that the applicant has attended all the group's annual meetings. This declaration fails to specifically confirm the applicant resided in the United States during the requisite period. In addition, the declaration is printed on organization letterhead that indicates the organization has offices in Bangladesh and Canada, as well as offices in the United States. Lastly, the applicant failed to list BHEC on Form I-687 where the form asks applicants to list affiliations or associations. These facts all call into question whether the declarant can actually confirm the applicant resided in the United States during the requisite period.

In denying the application, the director explained that she had reviewed the evidence submitted, as well as the testimony from the applicant's interview with an immigration officer, and determined that the applicant has not demonstrated eligibility for temporary resident status. The director also noted the

applicant stated in the interview that she did not file an application for amnesty before April 19, 2005. As a result of the applicant's statement in the interview, the director found the applicant could not have been turned away from a former INS office or Qualified Designated Entity (QDE). The director stated the applicant must have filled out the Form I-687 Supplement incorrectly when she indicated that she was turned away by an INS office or QDE. Although the director referred to a requirement for class membership, the director also considered the application on the merits. As a result, she is found not to have denied the applicant's class membership.

On appeal, the applicant explained that she had signed a sworn statement in the interview with an immigration officer without understanding the statement, because of her difficulties with the English language. In response to issues the director raised in relation to her class membership, the applicant stated that she had filled out the Form I-687 Supplement CSS/Newman LULAC class membership worksheet correctly. Lastly, she expressed an interest in submitting additional documentation in support of her application.

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 and declarations that are unsigned, lack sufficient detail, or do not document her continuous presence in the United States prior to January 1, 1982. Specifically, the declarations of [REDACTED] and [REDACTED] lack sufficient detail. The declarations from [REDACTED] and [REDACTED] fail to confirm the applicant resided in the United States during 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 lack of detail contained in the applicant's supporting affidavits, and 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.