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U.S. Citizenship
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Services

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APR 25 2008

FILE:

MSC-06-090-10494

Office: NATIONAL BENEFITS CENTER

Date:

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:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

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 Director, National Benefits Center. 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. The director determined that the applicant had not established by a preponderance of the evidence that she had continuously resided in the United States in an unlawful status for the duration of the requisite period. The director denied the application, finding that the applicant had not met her burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, counsel for the applicant asserts that the denial is contrary to the settlement agreement and the law. Counsel states that the denial is an abuse of discretion. Counsel states that the denial fails to apply the correct preponderance of the evidence standard.

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).

For purposes of establishing residence and physical presence under the CSS/Newman Settlement Agreements, the term “until the date of filing” in 8 C.F.R. § 245a.2(b) means until the date the applicant 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. 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 period, 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.* at 80. 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, 431 (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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet her burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687 Application and Supplement to Citizenship and Immigration Services (CIS) on December 29, 2005. At part #30 of the Form I-687 application where applicants are asked to list all residences in the United States since first entry, the applicant showed her first address in the United States to be in Fall River, Massachusetts from June 2001 until July 2002. Similarly, at part #33, she showed her first employment in the United States to be for Wendy’s in Wareham, Massachusetts from June 2001 until September 2003. 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). Pursuant to the CSS/Newman Settlement Agreements, the term “until the date of filing” means until the date the applicant 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. The applicant failed to show on her Form I-687 application that she has continuously resided in the United States during this requisite period.

The applicant submitted as evidence a certified translation of her marriage certificate showing that her marriage took place on July 5, 1980 in Brazil. The applicant neglected to submit a copy of her marriage certificate or any other documentation. On January 31, 2006, the director issued a Notice of Intent to Deny (NOID) to the applicant. The NOID provides that the applicant failed to submit documentation to establish her eligibility for Temporary Resident Status. The applicant was afforded thirty (30) days to submit additional evidence in response to the NOID. The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documentation that may be provided 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." 8 C.F.R. § 245a.2(d)(3)(vi)(L). The applicant failed to provide any of these documents in support of her claim of continuous residence in the United States.

In response to the NOID, the applicant submitted an unsigned rebuttal statement. The applicant asserts that she believes she qualifies for temporary resident status under the Newman Settlement Agreement. The applicant states that her husband was discouraged from applying for legalization because during the requisite period he departed the United States and returned with a visa. The applicant states that the documents proving her residence have been lost or destroyed. The applicant requests an extension of time to allow her to locate persons who can verify that she and/or her husband were in the United States during the requisite periods of time.

The director denied the application for temporary resident status on September 14, 2006. Although the director did not issue his denial until seven months after the issuance of the NOID, the applicant failed to submit any additional evidence, such as affidavits, in support of her application. In denying the application, the director found that the applicant failed to submit sufficient evidence to establish that she resided in the United States during the requisite period. The director concluded that the applicant failed to meet her burden of proof in the proceeding.

On appeal, counsel for the applicant asserts that the denial is contrary to the terms of the law and the settlement agreement. Counsel states that the denial is an abuse of discretion and fails to apply the correct preponderance of the evidence standard. Counsel indicates that he will submit a brief within 30 calendar days.

The Form I-694, Notice of Appeal, was received as properly filed on October 3, 2006. As of the date of this decision, counsel has not submitted a brief nor has he submitted any additional corroborating evidence. The AAO sent a notice to counsel requesting a copy of the brief and/or additional evidence that he had indicated he would file. However, counsel failed to respond to this notice from the AAO.

Counsel's assertion that the denial is contrary to the terms of the law, is an abuse of discretion and fails to apply the correct preponderance of the evidence standard is unfounded. The applicant failed to provide *any* corroborating evidence of residence in the United States during the requisite period. The applicant submitted as corroborating evidence her own unsigned statement attesting to her eligibility for temporary resident status. Pursuant to 8 C.F.R. § 245a.2(d)(6), to meet her burden of proof, the applicant must provide evidence of eligibility apart from her own testimony. Therefore, the applicant's statement alone does not meet her burden of proof. The applicant has been given the opportunity to satisfy her burden of proof with a broad range of documentary evidence. *See* 8 C.F.R. § 245a.2(d)(3). However, the applicant has not submitted any corroborating evidence either in rebuttal to the NOID or on appeal. The applicant's failure to provide any documentary evidence to establish her continuous residence in the United States during the requisite period renders a finding that she has failed to satisfy her burden of proof, as delineated in 8 C.F.R. § 245a.2(d)(5). Pursuant to *Matter of E-M-*, *supra*, the applicant has not established that her claim is "probably true" under the preponderance of the evidence standard.

In conclusion, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of her 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 credible supporting documentation, it is concluded that she has failed to establish by a preponderance of the evidence that she has continuously resided in an unlawful status in the United States for the requisite period 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.