



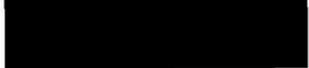
U.S. Citizenship  
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Services

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FILE:



Office: NEW YORK

Date: **AUG 05 2008**

MSC 05 038 10043

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.

*Michael T. Kelly*  
for 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, 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 November 7, 2004. The applicant was interviewed by a Citizenship and Immigration Services (CIS) officer on March 17, 2006 and a Notice of Intent to Deny (NOID) the application was issued on March 17, 2006. Upon review of the record including the response to the NOID, the director denied the application on August 1, 2006. On appeal, counsel for the applicant provides a brief.

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 applicant attempted to file the application. 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 or attempting to file 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 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 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. *See* 8 C.F.R. § 245a.2(d)(6).

Even if the director has some doubt as to the truth, if the applicant 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 evidence to establish her entry into the United States prior to January 1, 1982 and continuous unlawful residence since such date through the date she attempted to file the application.

On the Form I-687, the applicant indicated she had last entered the United States on June 2, 1987. The applicant listed her addresses for the pertinent time period as: [REDACTED], Ozone Park, New York from October 1981 to July 1984; [REDACTED], Woodside, New York from August 1984 to November 1986; and [REDACTED], Brooklyn, New York from December 1986 to April 1995. The applicant indicates she was self-employed as a baby sitter and door to door odd jobs from 1984 to the date of filing the application. The applicant indicates she left the United States in April 1987 to go to Canada to visit relatives and returned to the United States in June 1987. The applicant's date of birth is listed as April 26, 1967.

In an affidavit dated October 28, 2004 in support of the application, the applicant declared: that she entered the United States on October 20, 1981 with a visitor's visa and remained in the United States in an unlawful status since that time except for a brief absence; that on April 30, 1987 she left the United States for Canada to visit relatives there and returned to the United States on June 2, 1987 without a visa and without inspection; and that she attempted to file for legalization between May 1987 and May 1988 but was told by an Immigration and Naturalization Services (INS) officer, that she was not qualified to apply because she had traveled outside the United States.

The record also contains a Form I-687 dated and signed by the applicant on August 10, 1987 used to establish the applicant's class membership in the CSS/Newman class action lawsuit. The August 10, 1987 Form I-687 provides the same addresses as listed above for her residences during the applicable time period.

The record also includes several affidavits that contain the following information relevant to the applicant's Form I-687 including:

- An unsigned affidavit that contains the notary's signature and identifies the witness as [REDACTED]. This affidavit is questionable as the notary apparently affixed his name and stamp to an unsigned document. This affidavit is not probative.
- A July 10, 1990 affidavit signed by [REDACTED] of Brooklyn, New York who declares: that the applicant is a distant relative; that she entered the United States before January 1, 1982 and has been residing in the United States continuously in an unlawful manner; that her legalization application was denied by the INS officer during the period of legalization between May 1987 and May 1988; that the affiant went to the INS office with the applicant for filing her legalization application; and that her legalization efforts failed because of her short absence from the United States.
- An August 26, 2002 affidavit signed by [REDACTED] of Flushing, New York who declares: that he has known the applicant since December 1981; that the applicant entered the United States before January 1, 1982 and has been continuously physically present in the United States except for a short absence; that her legalization application was denied by the INS officer during the period of legalization between May 1987 and May 1988; and that he has personal knowledge of the applicant's efforts and endeavors for legalization.
- A May 25, 2004 affidavit signed by [REDACTED] of Astoria, New York who declares: that he has known the applicant since 1981; that she entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status except for a brief absence; and that her legalization application was denied by the INS officer during the period of legalization between May 1987 and May 1988.
- A May 30, 2004 affidavit signed by [REDACTED] of Brooklyn, New York who declares: that he has known the applicant since 1981; that he has personal knowledge the applicant left the United States for Canada on April 30, 1987 to visit her relative and re-entered the United States on June 2, 1987 without visa and inspection.
- A June 13, 2004 affidavit signed by [REDACTED] of Arlington, Texas who declares: that he has known the applicant since December 1981; that she entered the United States before January 1, 1982 and has been continuously physically present in the United States in an unlawful status except for a short absence; that she tried to apply for legalization between May 1987 and May 1988 but was turned away because she traveled outside the United States without advance parole; and that he has personal knowledge of the applicant's efforts and endeavors for legalization.
- An August 16, 2004 affidavit signed by [REDACTED] who declares: that the applicant is personally known to her; that she became acquainted with the applicant at a social function in Brooklyn, New York in 1981; that the affiant and the applicant shared the same rental house in Woodside, New York and shopped, shared cultural activities, and discussed different matters and affairs; and that the longest time she had not seen the applicant was from April 30, 1987 to June 2, 1987 when the applicant was visiting relatives in Canada. The affiant also lists the applicant's same addresses as those on the Form I-687.

In response to the district director's NOID, counsel for the applicant submitted a brief asserting that affidavits alone could establish an applicant's eligibility for this benefit. Counsel also included four additional documents:

- An April 9, 2006 affidavit signed by [REDACTED] the applicant's father and a resident of Bangladesh who declares: that the applicant left Bangladesh on October 19, 1981; that she went to the United States with her husband; that she kept in close contact with him and the family and told them of her residence and addresses; and that many of the family friends and relatives visited the applicant in New York at her different residences in the United States.
- An April 10, 2006 letter signed by the Commissioner of Ward No. 42, Dhaka City Corporation in Bangladesh who certifies that the applicant has been living in the United States since 1981 and that "she detached from her home country pretty long time."
- A March 11, 2006 affidavit signed by [REDACTED] of Kentwood, Michigan who declares: that he has known the applicant since October 1981; that he met her while she was living at [REDACTED] in Ozone Park, New York; that he has always kept in touch with the applicant and has visited her in New York several times.
- A March 13, 2006 affidavit signed by [REDACTED] of Diamond Bar, California who declares: that the applicant is a friend of the family; that he has known her since 1982 when he first met her in New York when she was living at [REDACTED] in Ozone Park, New York; and that he has always kept in touch with her since 1982 and visits her every time "we" are in New York.

On August 1, 2006, the director determined that the applicant had not submitted additional information or documentation sufficient to overcome the reasons for denial listed in the NOID. On appeal, counsel for the applicant asserts: that CIS failed to state specific reasons for its findings; that CIS failed to provide a rationale for the deficiency of the affidavits; that CIS failed to consider the lapse of time between 1981 to 2006; that the CIS decision was based on a prototype decision; that CIS had imposed an undue burden by defining and interpreting the legal standards contrary to the statutory provisions; that the affidavits submitted were credible; that failure to submit evidence besides affidavits could not be the sole basis for denial; that CIS has no adverse evidence to disprove the affidavits and documentation submitted in support of the applicant's claim; that the affidavits reflect the affiants' personal knowledge of the events and circumstances of the applicant's residence and presence in the United States for the statutory period, as well as providing contact numbers and addresses; and that CIS abused its discretion in denying the application.

The AAO has reviewed all the affidavits listed and finds that the majority of the affidavits provide general information including such broad statements as: the applicant entered the United States prior to January 1, 1982, and resided continuously in the United States in an unlawful status except for a brief absence, and tried to apply for legalization between May 1987 and May 1988. Similarly, statements made by affiants

that the affiant has known the applicant since a certain date without the pertinent details describing how the affiant met the applicant, without concrete information detailing interactions between the affiants and the applicant, and details of the claimed relationship of more than fifteen to twenty-five years, have little probative value. When an applicant is attempting to establish eligibility for this benefit with only affidavits, the applicant must provide affidavits that have some level of detail, other than a statement reciting the requirements of the statute and declaring that the applicant has complied with those requirements. The AAO finds that the affidavits of [REDACTED], and [REDACTED] all fail to provide sufficient information regarding the nature and frequency of their contact with the applicant or the events and circumstances surrounding their interactions with the applicant. Based on the minimal information found in these affidavits, the AAO is unable to conclude that the affiants actually had personal knowledge that the applicant entered the United States prior to January 1, 1982 and resided in the United States for the requisite time period. The general nature of information that characterizes these documents lacks sufficient indicia to establish the reliability of their assertions. In addition, the affidavits of [REDACTED] of Kentwood, Michigan, [REDACTED] of Diamond Bar, California, and [REDACTED] of Arlington, Texas do not explain or otherwise clarify how these affiants had personal knowledge of the applicant's whereabouts in New York when these individuals reside in other areas.

Likewise, the affidavit of the applicant's father and the letter from the Dhaka City Corporation Commissioner substantiate only the applicant's departure from Bangladesh and do not establish her continuous residence in the United States. Neither of these individuals has personal knowledge of the applicant's location after she left Bangladesh but only have information provided to them by other individuals not under oath.

The only affidavit in the record that contains some detail regarding the affiant's personal knowledge of the applicant's residence in the United States is the affidavit of [REDACTED] who indicates that she met the applicant at a social function in Brooklyn, New York in 1981, that she and the applicant shared a rental house in Woodside, New York, and shopped, shared cultural activities, and discussed different matters and affairs. However, this affidavit does not provide a sufficient level of information to substantiate that the affiant had personal knowledge of the applicant's continuous residence in the United States. The affiant does not provide the dates she lived with the applicant and does not describe the circumstances of the applicant when the applicant lived in Woodside, New York. The affiant provides generalities when discussing how she met the applicant and the subsequent claimed interactions with the applicant. The affiant does not describe the dates of these activities except in the most general of terms. Such an affidavit is of minimal probative value.

The AAO acknowledges counsel's concern with the director's perfunctory denial decision. Although the director did not articulately elaborate on the deficiencies of the affidavits, the base generalizations in each of the affidavits and the failure to include any details establishing the legitimacy of the affidavits, does not call for elaborate discussion detailing the deficiencies. The affidavits and the lack of information in them do not require more than a perfunctory analysis. The AAO also observes that the director did not deny

the application because the applicant submitted only affidavits; rather the director denied the application because the applicant submitted only deficient affidavits to support her claim.

When viewed as a whole, the information in the record lacks the necessary detail to substantiate the applicant's entry into the United States prior to January 1, 1982 and continuous unlawful residence in the United States for the requisite time period. The deficient affidavits submitted comprise the only evidence of the applicant's residence in the United States from prior to January 1, 1982 through the requisite time period. This information lacks credibility and probative value for the reasons above noted. 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. The applicant has failed to meet her burden of proof and 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. The appeal will be dismissed.

**ORDER:** The appeal is dismissed. This decision constitutes a final notice of ineligibility.