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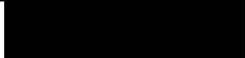
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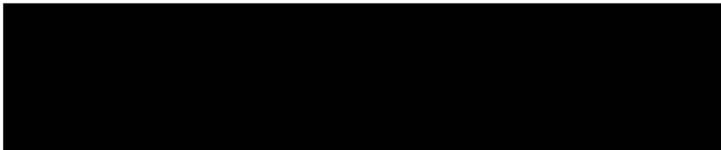
IN RE:

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. 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 "Robert P. Wiemann".

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. 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 22, 2005. The applicant was interviewed on March 16, 2006. On June 27, 2006, the director issued a Notice of Intent to Deny (NOID) the application and ultimately denied the application on August 1, 2006. On appeal, counsel for the applicant claims that neither the applicant nor counsel received a copy of the NOID. Counsel also asserts that the director used too strict a standard and did not give proper weight to the evidence submitted when denying the application.

Preliminarily, the AAO observes that the NOID was accurately addressed to the applicant and to counsel of record. In addition, the NOID decision indicates that a copy of the NOID was "cc'd" to counsel at counsel's correct address. The record also includes the envelope sent to counsel at his correct address certified return receipt requested and the post office's designation that the addressee refused to accept the envelope. Counsel's refusal to accept the NOID is not excused and the matter will be adjudicated based on the information in the record.

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.* 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. *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 credible 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 listed her addresses for the pertinent time period as: [REDACTED] Hampton Bays, New York from 1981 to 1983; [REDACTED], Ridgewood, New York from 1983 to 1987; and [REDACTED] L from 1987 to the date she filed the application. The record also includes three affidavits regarding the applicant's residences during the pertinent time period:

- An October 25, 1993 affidavit signed by [REDACTED], a landlord/lease holder, currently residing at [REDACTED] Hampton Bays, New York certifying the applicant's period of residency was three years from 1981 to 1983 and the applicant's address is [REDACTED] Ridgewood, New York; a second affidavit dated November 15, 1993 signed by [REDACTED] indicating that he had known the applicant since 1981 and knew that the applicant had left the United States on or about June 10, 1987 because he had taken her to the airport.
- A November 15, 1993 affidavit signed by [REDACTED], a landlord/lease holder currently residing at [REDACTED], Ridgewood, New York certifying the applicant's period of residency was from 1983 to 1987 and that the applicant's address is [REDACTED] Ridgewood, New York.

- An affidavit that appears dated November 15, 1997 signed by [REDACTED] a landlord/lease holder currently residing at [REDACTED], Ridgewood, New York certifying the applicant's period of residency from 1987 to 1993 and that the applicant's address is [REDACTED] Ridgewood, New York; a second affidavit dated November 15, 1993 signed by [REDACTED] indicating that he had known the applicant since 1981 and knew that the applicant had left the United States on or about June 10, 1987 as he had given her money and a letter to take to his relatives in Poland.

The record also contains information regarding the applicant's claimed employment history during the pertinent time period in the United States including:

- A letter dated December 15, 1994 on the letterhead of Chatwal Hotels signed by the manager of housekeeping indicating that the applicant was employed from September 1981 to May 1984 as a housekeeper by the hotel;
- An October 14, 1994 affidavit signed by [REDACTED] indicating that the applicant worked as a babysitter for her from November 1981 to June 1986 and that this information was taken from the company records and that the INS may not have access to the records due to confidentiality;
- A March 12, 1994 affidavit signed by [REDACTED] indicating that the applicant worked as a nurse's aid from April 1986 to February 1992, part-time and that this information was taken from the company records and that the INS may not have access to the records due to confidentiality.

The AAO has reviewed the documentation submitted and observes the following deficiencies. The applicant has submitted three affidavits to establish her employment during the requisite time period, however, two of the affidavits are not on the employer's stationary and the affiants indicate the information came from company records but do not identify the company. Moreover, the AAO declines to accept the unavailability of "company records" due to confidentiality as a legitimate reason. The letter signed by Chatwal Hotels is also deficient as it does not identify the source of the information and does not disclose periods of lay off. Pursuant to 8 C.F.R. § 245a.2(d)(3)(i), letters from employers should be on employer letterhead stationary, should indicate periods of lay off, should declare whether the information was taken from company records, and identify the location of such company records and state whether such records are accessible or why the records are unavailable. The AAO does not find the two affidavits and letter probative in establishing the applicant's continuous residence during the requisite time period.

The three affidavits submitted to establish the applicant's residences during the applicable time period are also deficient. The affidavits do not contain sufficient information to enable Citizenship and Immigration Services (CIS) to ascertain that the applicant lived at each location. The affidavits do not clearly set forth the applicant's actual residence during the requisite time period. **The affidavits lack detail of the circumstances and events associated with the applicant's residence in each location.**

The November 15, 1993 affidavits submitted by [REDACTED] and [REDACTED] do not provide detail regarding how they met the applicant and the events and circumstances surrounding their relationship with the applicant, other than as described in their October 25, 1993 and November 15, 1993 affidavits indicating they were the applicant's landlord/leaseholder for a limited time period. Although each affiant claims to have known the applicant since 1981, the affiants fail to provide details regarding their claimed friendships with the applicant or to provide any information that would indicate personal knowledge of the applicant's 1981 entry to the United States, or any other information regarding the period of time of their claimed relationships. Lacking relevant details, these affidavits have minimal probative value in establishing the applicant's continuous unlawful residence in the United States for the requisite time period.

These deficient affidavits and documents comprise the only evidence of the applicant's residence in the United States from prior to January 1, 1982 through the requisite time period. The statements and affidavits lack credibility and probative value for the reasons 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. Given the lack of credible supporting documentation, it is concluded that the applicant 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. The appeal will be dismissed.

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