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FILE: [REDACTED]
MSC-05-285-11770

Office: LOS ANGELES

Date: **AUG 27 2008**

IN RE: Applicant: [REDACTED]

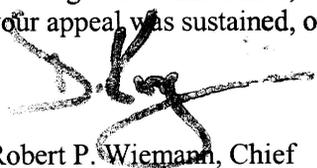
APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. 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 if your case was 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 District Director, Los Angeles. 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. Specifically, the director noted that the applicant provided no primary documentary evidence of her alleged entry into the United States in 1981 and residence thereafter, and that the affidavits she presented in lieu of this requirement were not independently verifiable, and thus not credible or probative. 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.

The applicant represents herself on appeal. She claims that the adjudications officer at her interview refused to accept the documentary evidence she offered in support of her application. The applicant also states that she was “persuaded” to sign a statement that she had been absent from the United States for a period of two years during the statutory period.¹ Ultimately, the applicant maintains that additional proof of her eligibility for temporary resident status will be forthcoming.

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.

¹ The AAO notes that the district director did not deny the application for temporary resident status on this basis. Therefore the AAO will not address this ground for appeal.

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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to meet her burden of establishing continuous unlawful residence in the United States for the duration of 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 July 12, 2005. The applicant stated therein that she was born in Mexico on December 19, 1979. At part #30 of the Form I-687 where applicants were asked to list all residences in the United States since first entry, the applicant listed her addresses in the United States during the statutory period as follows:

1. From April, 1982 to March, 1985 – [REDACTED]
2. From March, 1985 to July, 1988 – [REDACTED]

Similarly, at part #32 of the Form I-687 where applicants were asked to list all departures from the United States since first entry, the applicant listed absences from November 1986 to December 1986, and July 1988 to June 2003. However, the AAO notes that these figures are revised in red ink to indicate an absence from July 1988 to 1991.

The district director issued a Notice of Intent to Deny (NOID) on November 17, 2005, explaining that the applicant failed to submit documentation establishing her eligibility for temporary resident status pursuant to the terms of the settlement agreements. The applicant was granted 30 days to submit additional documentation, and was informed that a failure to respond to the NOID would result in the denial of her application.

The applicant submitted a statement and additional evidence in response to the NOID on December 13, 2005. The applicant stated therein that she and her family entered the United States without inspection in April 1981, that they resided continuously in an unlawful status for the requisite period of time, and that their initial application for temporary resident status was rejected by the “INS-Legalization Office” in Los Angeles because of her family’s return to Mexico between November and December 1986.

In further support of her application, the applicant offered four affidavits from individuals who claim to have known the applicant during the statutory period. [REDACTED] that she was the landlord for the applicant and her parents when they resided at [REDACTED], Los Angeles, from 1982 to July 1995. The AAO notes that the record before us does not contain documentary evidence to support this statement. For example, there is no photocopy of a rental agreement, rental receipts, or any other evidence to indicate a landlord-tenant relationship between the affiant and the applicant. Furthermore, the dates of residence at this address do not correspond with the dates listed on the Form I-687 for that particular span of time. The second affidavit from [REDACTED] that she and the applicant’s family were neighbors between 1983 and July 1995 when they resided, respectively, at [REDACTED] Avenue and [REDACTED]. The third and fourth affidavits from [REDACTED] are similar in nature to the first two in that they lack factual specificity, and also cover a range of years not relevant to the statutory period of time. The AAO observes that none of the affidavits is sufficient to establish a direct connection with the applicant, i.e., they do not provide much detail regarding how the affiants know the applicant or that the affiants resided at the addresses claimed during the relevant period. Thus, they are given little probative weight.

Ultimately, the applicant submitted a certified translation of her Mexican birth certificate which confirms that she was born in Mexico on December 19, 1979. Therefore, the applicant would have been less than two years old if she entered the United States in April 1981, as alleged. The AAO notes that the record to date contains no evidence of the applicant’s childhood years in this

country. For example, there is no documentary evidence to indicate that the applicant was ever seen by a physician or attended school, although she claimed at her interview that she attended the pre-K program at St. Thomas Apostle Church from 1983 to 1984.

The director denied the application for temporary residence on December 11, 2006. In denying the application the director noted that the applicant had not submitted credible, probative evidence to establish that she entered the United States at some point prior to January 1, 1982, and resided here for the requisite period of time. The director noted that the only evidence the applicant provided beyond her own assertions that she entered the United States in April 1981 and resided here for the requisite period of time were the four affidavits discussed above. The director stated that the affidavits had extremely limited probative value because the affiants do not provide any first hand knowledge of how they know the applicant, any proof of identity, or any evidence they were present in the United States between 1981 and 1988.

On appeal, the applicant claims that her father's tax returns for the years 1981 to 1987 and the affiants' identity documents were refused by the adjudications officer at her interview. In support of her appeal, the applicant resubmitted the affidavits listed above, as well as copies of the naturalization certificates and driver's licenses for [REDACTED]. Although the applicant stated on the Form I-694 that further proof would be presented, the AAO observes that, to date, no additional evidence has been submitted.

In this case, 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.