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U.S. Citizenship
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Services

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FILE: [REDACTED]
MSC-05-312-13736

Office: DALLAS

Date: **AUG 29 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 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, Dallas. 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, the applicant asserts that she has resided in the United States since before 1982. The applicant furnishes additional documentary evidence.

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 August 8, 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 that during the requisite period she resided in Pomona, California from February 1981 until August 1988. The applicant listed her addresses as: [REDACTED] California from February 1981 until March 1982; [REDACTED] California from April 1982 until June 1985; and [REDACTED] California from July 1985 until August 1988. At part #33, she showed her first employment in the United States to be as a babysitter in California from March 1986 until December 1988. The applicant listed her employer’s name as [REDACTED] but did not provide the specific location of this employment.

The applicant submitted the following documentation:

- A fill-in-the-blank form affidavit from [REDACTED] dated July 20, 2005. [REDACTED] affidavit provides, [sic] family moved to the U.S. in 1981 to make a better life for themselves. . . . We met in 1981 [sic] we have remained friends through the years [sic] when we were younger we loved to go to eachothers [sic] home and play games together.”

This affidavit indicates that [REDACTED] has personal knowledge of the applicant's residence in California at: [REDACTED] from February 1981 until March 1982; [REDACTED] from April 1982 until June 1985; and [REDACTED] from July 1985 until August 1988. However, the affidavit does not establish [REDACTED] direct personal knowledge of the applicant's residence at these addresses. It does not convey how [REDACTED] first became acquainted with the applicant. Nor does it illustrate the frequency of contact they maintained in the United States during the requisite period. Given these deficiencies, this affidavit is without any probative value as evidence of the applicant's residence in the United States during the requisite period.

- A fill-in-the blank declaration from [REDACTED] dated July 20, 2005. This declaration states [REDACTED] first met the applicant in February 1981 at her home in California. The declaration in pertinent part provides:

We met in 1981 [sic] we have remained very good friends through the years. We did alot [sic] together [sic] [REDACTED] did not have much family here in the U.S. so my family welcomed her family to our home and into our family. We loved celebrating the holidays together [sic] during Christmas we would help my mother make tamales and we would go with her door to door saleing [sic] tamales [sic] she would always pay us for helping her and we would buy Christmas presents for eachother [sic] and for our family.

Although this declaration offers some detail on [REDACTED] relationship with the applicant during the requisite period, it is of questionable credibility. [REDACTED] failed to answer several questions on the declaration regarding her identity, proof of her residence in the United States, and proof of her relationship with the applicant. Question #3 on the declaration requests the declarant to provide her proof of identity such as a current driver's license or passport. [REDACTED] responded to this question with "N/A" (not applicable). Question #13 on the declaration requests the declarant to provide proof of where she was living between 1982 and 1988. [REDACTED] failed to provide such documentation. Given [REDACTED] failure to fully complete the declaration, it is of little probative value as evidence of the applicant's residence in the United States during the requisite period.

On January 18, 2006, the director issued a Notice of Intent to Deny (NOID) to the applicant. The director indicated that the statements from [REDACTED] could not be verified because their phone numbers were not provided. The director noted that during the applicant's interview she testified that [REDACTED] is her sister's friend from work. The director determined that the applicant failed to provide evidence to demonstrate that she meets the Class Membership definition and is eligible for temporary resident status as defined by the regulations at 8 C.F.R. § 245a.2(b). It should be noted that although the director determined that the applicant did not meet the Class Membership definition, he nevertheless adjudicated the application for temporary resident status on the merits, and treated the applicant as a class member.

In rebuttal to the NOID, the applicant asserts that she told the officer that her sister's friend, [REDACTED], has known her since 1981. The applicant states that this fact was lost during the translation. The applicant submitted the following documentation:

A notarized letter from [REDACTED] dated February 13, 2006. This letter in pertinent part provides, ". . . I [sic] known [REDACTED] for 22 years [sic] year 1984 she lived in California, we met at a grocery store, then I moved to Dallas, TX like in 1995 and we stay were [sic] in contact, then I told her if she whan't [sic] to moved [sic] down here, because she wa [sic] single and there was nothing that could hold her out there, sow [sic] I offer to come and she started working with me at Jack in the Box. . . ." This letter offers no information on the frequency of contact [REDACTED] had with the applicant during the requisite period. Furthermore, the letter is inconsistent with the applicant's Form I-687. The letter states that [REDACTED] moved to Dallas, Texas in 1995 and then invited the applicant to join her in Dallas. It indicates that the applicant thereafter moved to Dallas, Texas. However, the applicant's Form I-687 shows that she moved to Dallas, Texas in September 1988. Given the lack of detail and inconsistency in this affidavit, it is without any probative value as evidence of the applicant's residence in the United States during the requisite period.

- An affidavit from [REDACTED] dated February 13, 2006. This affidavit in pertinent part provides, "[I] [h]ave known [REDACTED] since [sic] year 1982 [sic] she is my sister-in-law [sic] we met in the State of California. [sic] Before marrying her sister. She is of good moral character and an outstanding person. . . ." This affidavit indicates that [REDACTED] first met the applicant in the United States in 1982. However, it does not detail his relationship with the applicant subsequent to that date. Therefore, it fails to establish [REDACTED] direct personal knowledge of the applicant's residence in the United States during the requisite period. Given this deficiency, this affidavit is without any probative value as evidence of the applicant's residence in the United States during the requisite period.

On July 18, 2007, the director issued a decision to deny the application. In denying the application the director determined that there is no evidence in the applicant's file to establish her eligibility for temporary resident status as defined by the regulations at 8 C.F.R. § 245a.2(b).

On appeal, the applicant asserts that she has resided in the United States since before 1982. The applicant furnishes an affidavit from [REDACTED]. The applicant also resubmits the documentation she had furnished in response to the NOID.

The affidavit from [REDACTED] dated July 26, 2007, provides, "[REDACTED] has been known to me to be a person of good moral character, and that I have knowledge that she has been in the U.S.A. since before the year 1982. . . ." This affidavit fails to establish the origin of the information [REDACTED] has attested to. The affidavit offers no details on [REDACTED] knowledge of the applicant's residence in the United States since before 1982. Given this

deficiency, this affidavit is without any probative value as evidence of the applicant's residence in the United States during the requisite period.

In summary, the applicant has failed to provide credible, reliable and probative evidence of her residence in the United States during the requisite period. The applicant has not provided sufficient evidence to establish that she entered the United States prior to January 1, 1982. Nor has she established that she has continuously resided in the United States during the requisite period. The applicant has been given the opportunity to satisfy her burden of proof with a broad range of evidence. *See* 8 C.F.R. § 245a.2(d)(3). The applicant submitted as evidence of her residence in the United States during the requisite period, corroborating statements from

and
As discussed, four of the statements lack considerable detail and, therefore, are without any probative value. One statement, a fill-in-the blank declaration from is of some probative value. However, that probative value is mostly negated by failure to fully complete the declaration. Pursuant to 8 C.F.R. § 245a.2(d)(6), the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. Since the applicant's documentation is at best of minimal probative value, she has not furnished sufficient evidence to meet her burden of proof in this proceeding.

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.