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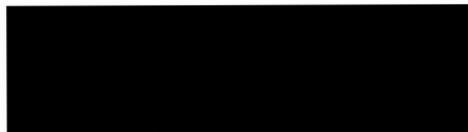
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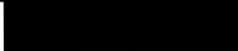


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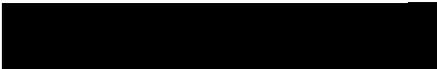
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FILE:   
MSC-06-076-13002

Office: PHILADELPHIA

Date: **AUG 29 2008**

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:

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, Philadelphia. 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 submits additional evidence in support of her application.

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 on December 15, 2005. Part #30 of the Form I-687 application requests the applicant to list her residential addresses in the United States since first entry and the duration of her stay at each address. The applicant failed to fully complete this part of the application. The applicant listed her present address at [REDACTED] Philadelphia, Pennsylvania without indicating the start date of her residence at this address. The applicant also indicated that and that she resided in Bronx, New York, but did not show any residential address(es) or the duration of her residence at this location. This lack of detail draws into question the overall credibility of the applicant’s claim of continuous residence in the United States during the requisite period.

The applicant submitted the following documentation:

- An affidavit from [REDACTED] dated December 12, 2005. The affidavit in pertinent part provides, “. . . I met [REDACTED] at a church function in April of 1987. [REDACTED] who came from my mother country of Saint Vincent and the Grenadines, is a very good and moral person. ” This affidavit fails to convey the location and name of the church where first met the applicant. Notably, there is no indication that they first met in

the United States. Additionally, this affidavit fails to illustrate the type 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.

On January 31, 2006, the director, National Benefits Center, issued a Notice of Intent to Deny (NOID). The NOID states that the applicant failed to submit documentation to establish her eligibility for temporary resident status. The applicant was afforded 30 days to submit additional evidence in response to the NOID. Pursuant to 8 C.F.R. § 245a.2(d)(6), to meet her burden of proof, an applicant must provide evidence of eligibility apart from her own testimony. The regulations at 8 C.F.R. § 245a.2(d)(3) provide an illustrative list of contemporaneous documentation that may be furnished 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).

In rebuttal to the NOID, the applicant submitted the following documentation:

A fill-in-the-blank form affidavit from [REDACTED] dated December 2, 2005. The pertinent part of the affidavit states that [REDACTED] is aware that the applicant entered the United States before January 1, 1982 and resided in a continuous and unlawful status until after May 4, 1988 except for brief, casual and innocent departures. However, the affidavit fails to establish the origin of the information [REDACTED] has attested to. The affidavit does not convey how [REDACTED] first became acquainted with the applicant. Nor does it illustrate the type of contact they maintained 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; and

- An affidavit from [REDACTED] Pastor, St. Anthony S.B. Church, dated December 9, 2005. The pertinent part of this affidavit provides, ". . . [i]t is indeed a great pleasure for me to convey to you the impressions of my beloved Leader [REDACTED] of Philadelphia, in the State of Pennsylvania, 19131 [sic] a name pertaining to her in the Spiritual Baptist Faith as a member of the above mentioned Church, and [sic] has been a close relation for many years. . . ." The regulations at 8 C.F.R. § 245a.2(d)(3)(v) provide that attestations by churches should include the applicant's inclusive dates of membership and where the applicant resided during the requisite period. [REDACTED] affidavit fails to comply with these delineated guidelines. Furthermore, the affidavit does not state the year [REDACTED] first became acquainted

with the applicant. 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.

On November 13, 2006, the District Director, Philadelphia, denied the application. In denying the application, the director determined that the applicant failed to present convincing and credible evidence that she resided in the United States in an unlawful status from before January 1, 1982 and that she sought to have her status legalized.<sup>1</sup>

It should be noted that the director referred to an employment letter from [REDACTED] Center and a bank letter from Citizens Bank of Pennsylvania as the applicant's corroborating evidence. However, these documents were not issued on behalf of the applicant. They were instead issued on behalf of [REDACTED] the applicant's Form I-134, Affidavit of Support, sponsor. However, this is a harmless error that did not effect the director's decision to deny the application.

On appeal, the applicant furnished another statement from [REDACTED] and a statement from [REDACTED]

The statement from [REDACTED] dated December 11, 2006, provides:

I am writing this affidavit to support the fact that I know the applicant. We grew up together then I migrate to the USA after which we loose touch with other, after which I found out that she was here sometime in the eighties, when we meet each other again. We were close to each other, she use to visit me at times. During that time I was aware she was not working and I will try to help her out financially. From my knowledge she has never bought or own a house since she is here. . . .

[errors in the original]

The statement from [REDACTED] dated December 11, 2006, provides:

My name is [REDACTED] I reside at [REDACTED] I'm making this statement in support of application of [REDACTED] who is the applicant late amnesty program. I have know the applicant sometime in the 80's when I met the applicant around that time when I was living at [REDACTED] I am writing this letter in good faith, and the best of my knowledge the applicant is not dependent on public assistance. . . .

[errors in the original]

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<sup>1</sup> Although the director determined that the applicant failed to establish that she sought to have her status legalized, he nevertheless treated her as a class member and adjudicated the application on its merits.

These statements indicate that the authors first met the applicant in the United States “sometime in the eighties.” Since the statements do not specify the date(s) that the authors first met the applicant, it is impossible to assess whether it was during the requisite period. Furthermore, the letters do not illustrate the type of contact the authors maintained with the applicant during the requisite period. Given these deficiencies, both of these statements are 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 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, five statements. These statements lack considerable detail on the authors’ relationship with the applicant in the United States during the requisite period. As such, they are without any probative value as corroborating evidence. 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 without any 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.