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U.S. Department of Homeland Security
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**U.S. Citizenship
and Immigration
Services**

PUBLIC COPY



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FILE:



Office: PHILADELPHIA

Date:

AUG 29 2008

MSC 06 053 12647

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.

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, Philadelphia, Pennsylvania. 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. On July 6, 2006 the director issued a Notice of Intent to Deny (NOID) the application and the record includes the applicant's July 21, 2006 response. On November 27, 2006 upon review of the record, the director denied the application, determining 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 a letter and re-submits documents and letters previously submitted.

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 for the requisite time period. The AAO considers only those documents relevant to establishing the applicant's entry into and continuous unlawful residence for the pertinent time period.

On the Form I-687 filed November 22, 2005, the applicant indicates that she last entered the United States on September 17, 1997 with a visitor's visa. The applicant lists her addresses for the pertinent time period as: [REDACTED] from January 1981 to December 1982; [REDACTED] Street, Philadelphia, Pennsylvania from December 1982 to December 1984; and [REDACTED] Bronx, New York from January 1985 to April 1991. The applicant lists her absences from the United States during the applicable time period from December 1984 to January 1985. The applicant lists her employment during the applicable time period: as a machine operator for Rome Knitting Hills [sic] from February 1981 to March 1983; as an assembler for ASI in Philadelphia/New York from March 1983 to January 1985; and as a self-employed housekeeper in Philadelphia/New York from January 1985 to April 1991.

The record also includes the applicant's Form I-485, Application to Register Permanent Resident or Adjust Status, filed April 25, 2003; a January 8, 1991 LULAC Class Member Declaration; a December 11, 2000 Legalization Questionnaire; and a Form I-687, dated August 18, 1988 used generally to establish an alien's class membership under the CSS/LULAC Settlement Agreements. The August 18, 1988 Form I-687 provides the same information regarding the applicant's addresses during the relevant time period,¹ and lists the same employment although providing slightly different dates. The applicant indicates that

¹ The August 18, 1988 Form I-687 notes the applicant's last address as [REDACTED], [REDACTED] 1985 to present.

Rome Knitting Mills employed her from February 1981 to November 1982 and that ASI employed her from March 1983 to December 1984.

The record also includes three letters submitted to substantiate the applicant's entry into and continuous unlawful residence for the requisite time period:

- A February 7, 2003 letter signed by [REDACTED] of Philadelphia, Pennsylvania who states that he has known the applicant for approximately 22 years; that he worked with the applicant at Rome Knitting Mills from 1981 to 1982; that he met her when she came to the United States from Colombia; and that he knew she came to the United States through Mexico because she used to talk about her experience at the border.
- A February 7, 2003 declaration signed by [REDACTED] of New Castle, Delaware who states that he has known the applicant since approximately 1983 when he and the applicant worked together for ASI (Architectural Shapes Inc.) as assemblers.
- A February 7, 2003 declaration signed by [REDACTED] of Philadelphia, Pennsylvania who states that she and the applicant have been friends for 16 years.

The applicant also submitted a photocopy of an envelope addressed to her at the [REDACTED] address in Philadelphia, Pennsylvania from an individual in North Carolina that bears a postmark that appears to be a date in 1984.

On appeal, the applicant asserts that she has proved many times that she qualifies to legalize her status in the United States as she was in the United States during the required period.

The AAO has reviewed the evidence of record, including the three letters submitted in support of the application. The AAO finds that the letters submitted do not provide sufficient detail of the circumstances and events surrounding the applicant's initial meeting with the declarants and their subsequent interaction to establish the affiants' knowledge of the applicant's continuous unlawful presence in the United States for the requisite time period. Although two of the letter-writers indicate they worked with the applicant, the letter-writers do not provide sufficient details regarding the company or the work that would demonstrate the frequency of their contact with the applicant or whether the applicant was absent from the United States during the applicable time period. The record does not contain any information from the applicant's and letter-writer's employers to assist in establishing the reliability of the letter-writers' claims. In addition, the letters are not notarized and are not sworn testimony. Because of the general nature of the information that characterizes these three letters, the letters do not establish the reliability of the declarations expressed. These letters are found to lack sufficient detail to establish that the applicant resided in the United States during the requisite period.

The AAO has also reviewed the photocopy of the envelope addressed to the applicant in the United States. The envelope demonstrates only that the applicant was reachable at the address for a limited time period in 1984. The photocopy of the envelope has limited probative value.

The three deficient letters, the photocopy of an envelope, and the applicant's statements 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 letters lack credibility and probative value for the reasons noted. The letters submitted do not provide relevant, probative details of the applicant's entry into the United States and continuous unlawful presence. 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 information in the letters and the lack of any other 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.