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U.S. Citizenship
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LA

FILE:

MSC-05-354-13526

Office: HARTFORD

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 Director, Hartford Field Office. 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 the basis for the director's denial is improper. The applicant states that she has furnished three additional affidavits.

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 his or 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 September 19, 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 her first address in the United States to be in Bronx, New York from October 1981 until July 1990. At part #33, she showed her first employment in the United States as a self-employed hair braider in Bronx, New York from October 1981 until July 1990.

The applicant submitted with her application an affidavit from _____ dated January 12, 2007. This affidavit provides in pertinent part:

. . . I have known _____ since 1981 when she and her ailing mother (now residing in Ghana) first arrived in the United State [sic] of America. My acquaintance with _____ was as a result of long lasting relationship between her parents and mine. Because of the closed [sic] relationship of our parents and also as a family friend, I do not hesitate to testify the behavior and character of _____ From the time I have known _____ found her to be very obedient, honest and

God fearing individual. She is also a hardworking, dependable, law abiding and cooperative individual. . . .

This affidavit fails to establish [REDACTED] relationship with the applicant in the United States during the requisite period. It does not state how frequently he came into contact with the applicant. Nor does it explain the type of contact they maintained. Moreover, the affidavit does not provide the location where [REDACTED] and the applicant first became acquainted. Given the lack of detail in this affidavit, it is without any probative value as evidence of the applicant's residence in the United States during the requisite period.

On November 17, 2005, the director, National Benefits Center, issued a Notice of Intent to Deny (NOID) to the applicant. The NOID provides that the applicant failed to submit documentation to establish her eligibility for temporary resident status. The applicant was afforded thirty (30) days 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. The applicant failed to provide any of these documents in support of her claim of continuous residence in the United States.

An applicant may also submit "any other relevant document." 8 C.F.R. § 245a.2(d)(3)(vi)(L). In response to the NOID, the applicant submitted an affidavit from [REDACTED] dated December 2, 2005. This affidavit provides, [REDACTED] . . . do declare that I have known [REDACTED] since 1981 when she first arrived in the United States of America. From the time I have known [REDACTED] I found her to be God loving person, honest, obedient, hardworking, dependable and has a high sense of responsibility. . . ." This affidavit fails to establish the origin of the information [REDACTED] has attested to. It does not explain how [REDACTED] first became acquainted with the applicant. It also fails to detail [REDACTED] relationship with the applicant in the United States during the requisite period. Relevant details would include how frequently he came into contact with the applicant and the type of contact they maintained. Given the lack of detail in this affidavit, it is without any probative value as evidence of the applicant's residence in the United States during the requisite period.

On February 2, 2007, the director issued a decision to deny the application. In denying the application, the director found that the applicant's absences from the United States exceeded 180 days and were not brief, casual or innocent. The director determined that the applicant's evidence and testimony fail to substantiate her claim of being in the United States in an unlawful status prior to January 1, 1982. The director further determined that the applicant cannot prove

that she had physical continuous unlawful presence in the United States since January 1, 1982 until she filed her application.

On appeal, the applicant asserts that based upon her documentation the basis for the director's denial is improper. The applicant states that she has furnished three additional affidavits.

The applicant furnished the following documentation:

- Another affidavit from [REDACTED] dated February 21, 2007, which provides in pertinent part:

I first met [REDACTED] in Ghana in the 1970s. We developed a friendship. [REDACTED] and her niece, [REDACTED], moved to the United States in the Fall of 1981. [REDACTED] took on the role of [REDACTED] mother. They worked hard together taking care of an elderly woman in New Jersey. We began celebrating many holidays together and special occasions. Unfortunately, [REDACTED] took ill and has not been to the United States since late 1987. [REDACTED] has been an amazing young woman in that she has been able to support herself from a very young age and stay away from many bad influences that she was exposed to due to her surroundings.

Although this affidavit states that [REDACTED] celebrated many holidays and special occasions with the applicant, it does **not provide** any specific details on these events. Nor does it indicate the years or time period during which the events were celebrated. Due to this **lack of detail, this affidavit fails to establish [REDACTED] relationship with the applicant in the United States during the requisite period. Therefore, it is without any probative value as evidence of the applicant's residence in the United States during the requisite period.**

- Another affidavit from [REDACTED] dated February 21, 2007, which provides in pertinent part:

My family and [REDACTED] family were very friendly back in Ghana. By Ghana's standards, my family is fairly well off, whereas, [REDACTED] family struggled to make ends meet. My friendship with [REDACTED] and [REDACTED] was re-instituted when they moved to the United States in the Fall of 1981. [REDACTED] took on the role of [REDACTED] mother. They worked hard together taking care of an elderly woman in New Jersey. We began seeing each other occasionally. My friendship with [REDACTED] began to flourish once [REDACTED] returned to Ghana permanently. [REDACTED] was alone, at that point in her life and she spent a significant amount of time with me and my family.

This affidavit states that [REDACTED] and the applicant "began seeing each other occasionally" after the applicant moved to the United States. This is a vague statement that does not explain the frequency and circumstances under which they associated with each other during the requisite period. Due to this lack of detail, this affidavit fails to establish

relationship with the applicant in the United States during the requisite period. Therefore, it is without any probative value as evidence of the applicant's residence in the United States during the requisite period.

- An affidavit from the applicant that states she has continuously resided in the United States since October 1981. The affidavit states that the applicant resided in the United States with her aunt, [REDACTED] until she turned 17 years old. The affidavit provides that the applicant has been absent from the United States on the following occasions: December 1986 until January 1987 (30 days); December 1987 until January 1988 (30 days); January 1, 1998 until January 31, 1998; January 9, 2002 until February 9, 2002; May 12, 2002 until June 12, 2002; and April 13, 2003 until May 4, 2003.

In denying the application, the director found that the applicant's absences from the United States "exceed the 180-day limit and they were not brief, causal or innocent." The applicant's Form I-687 shows that she has been absent from the United States on the following occasions: December 1986 until January 1987 and May 2002 until June 2002. The adjudication officer amended this part of the application during the applicant's interview to reflect the following additional absences: December 1987 until January 1988; November 1996 until December 1998; December 2001 until February 2002; and April 2003 until May 2003.

The issue of the applicant's absence from the United States during the requisite period relates to her ability to establish continuous residence in the United States. According to 8 C.F.R. § 245a.2(h)(1), an applicant for temporary resident status shall be regarded as having resided continuously in the United States if, at the time of filing of the application, no single absence from the United States has exceeded 45 days, and the aggregate of all absences has not exceeded 180 days between January 1, 1982 through the date the application for temporary resident status is filed, unless the applicant can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed. Under the CSS/Newman Settlement Agreements, the term "until the date of filing" 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.

Pursuant to 8 C.F.R. § 245a.2(h)(1) and the CSS/Newman Settlement Agreements, at issue in this proceeding are the applicant's absences from the United States from prior to January 1, 1982 until the date that she 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 applicant's Form I-687 and affidavit both show that during the requisite period she has been absent from the United States on the following occasions: December 1986 until January 1987 and December 1987 until January 1988. The applicant asserts in her affidavit

¹ The record does not reveal the date the applicant attempted to file or was caused not to timely file a Form I-687 application during the original legalization application period.

that both of these absences were for a period of 30 days. The adjudication officer noted on the Form I-687 that "all trips were at least one month." However, he did not record the exact dates of the applicant's departures from the United States. Since the record does not show the exact dates of the applicant's departures from the United States, a determination on whether these absences exceeded 45 days will not be made in this proceeding. Therefore, this part of the director's decision, denying the application because the applicant's absences from the United States "exceed the 180-day limit and they were not brief, causal or innocent," is withdrawn. Nevertheless, the director's actions must be considered to be harmless error as the AAO conducts a de novo review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(d)(6).

The director's decision to deny the application because the applicant failed to show that she continuously resided in the United States during the requisite period was correct. 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, two affidavits from [REDACTED] and two affidavits from [REDACTED]. As discussed, these affidavits lack considerable detail and, therefore, are without any probative value. 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.