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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:

[REDACTED]

Office: NEW YORK

Date:

DEC 11 2008

MSC-04-293-11205

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:

[REDACTED]

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 "John F. Grissom".

John F. Grissom, Acting 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, New York and 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 Act, and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet. The director denied the application after determining that the applicant had not established by a preponderance of the evidence that she had continuously resided or had been continuously physically present in the United States for the duration of the requisite period. The director noted that the applicant failed to respond to the Notice of Intent to Deny (NOID) dated February 28, 2006, and that the application was denied for the reasons stated in the NOID. 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 is eligible for temporary resident status. She submits an affidavit and copies of receipts as 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 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. See 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).

An alien shall be regarded as having resided continuously in the United States if at the time of filing an application for temporary resident status, no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, through the date the application is filed, unless the alien can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the alien was maintaining residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.15(c)(1).

If the applicant's absence exceeded the 45-day period allowed for a single absence, it must be determined if the untimely return of the applicant to the United States was due to an "emergent reason." Although this term is not defined in the regulations, *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), holds that emergent means "coming unexpectedly into being."

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 United States Citizenship and Immigration Services (USCIS) on July 19, 2004. On her Form I-

687 application at part #30 where the applicant was asked to list her places of residence she indicated that she resided at [REDACTED] in New York City from 1981 to 1984, and [REDACTED] in New York City from 1984 to 1994. She also indicated at part 33 of her I-687 Application that she was self-employed as a vendor from 1981 to 2004. The applicant indicated at part #32 of her I-687 Application that she was absent from the United States from June of 1987 to July of 1987, and from April of 1992 to May of 1992. During her interview with immigration officers on February 28, 2006 the applicant stated under oath that she entered the United States in 1981 and that she did not travel outside of the United States from January 1, 1982 to May 4, 1988.

Contrary to the applicant's statements in her Form I-687 Application and those made by her under oath during her immigration interview, the record of proceeding contains the applicant's I-485 Application to Register Permanent Residence or Adjust Status dated March 22, 1996 in which she stated at part #1 that she last arrived in the United States on August 5, 1992. She also stated at part # 3-B that she has three daughters born in Senegal on August 29, 1980, March 13, 1984, and August 2, 1987. The record contains the applicant's Form G-325, Biographic Information where she stated that her address was [REDACTED] in Dakar, Senegal from April of 1952 to August of 1992. She also indicated on that form that her address was [REDACTED] in New York from August of 1992 to September of 1994. Here, the applicant's statements are inconsistent and contradict each other. There has been no explanation given for the multiple contradictions. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The director issued a NOID on February 28, 2006 to the applicant at her last known address. The applicant failed to respond to the NOID. The director thereafter determined that the applicant had failed to establish her eligibility for the immigration benefit sought, and therefore, the application was being denied for the reasons set forth in the NOID.

On appeal, the applicant reasserts her claim of eligibility for temporary resident status. She submits copies of certificates, receipts and identification photographs that are dated subsequent to the requisite period, and therefore, are irrelevant to her claim. The applicant also submits a declaration from [REDACTED] in which he states that he has known the applicant since 1981 in New York and that she is thoughtful and hard working. Here, the declarant fails to indicate when and under what circumstances he met the applicant. The declarant also fails to specify the frequency with which he saw and communicated with the applicant or the applicant's place of residence during the requisite period. Because the declaration is lacking in detail, it can be afforded minimal weight in establishing the applicant's presence in the United States during the requisite period.

In the instant case, the applicant has failed to submit sufficient evidence or argument to overcome the director's denial. The declaration by [REDACTED], while providing some evidence of the applicant's presence in the United States, is insufficient to establish her continuous unlawful residence in the country throughout the requisite period. The applicant fails to address the inconsistencies found in the record regarding her entry into and absences from the United States.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of this 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 applicant's inconsistent statements regarding her date of entry into the United States, residence in and absences from the United States, and her reliance upon a declaration with little probative value, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States for the requisite period 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.