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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: BOSTON Date: DEC 24 2008

MSC 05 326 13361

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.

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, Boston. 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 August 22, 2005. Upon review, the director determined that insufficient evidence had been presented to establish eligibility under section 245A of the Act. On November 17, 2005, the director issued a notice of intent to deny (NOID) stating that the applicant had not established eligibility for temporary residence under section 245A of the Act. The applicant was granted 30 days from the date of the notice to submit additional evidence in support of her application. In response, on December 14, 2005, the applicant submitted two sworn affidavits. The director denied the application, finding that the applicant had not provided credible evidence to establish that she had entered the United States prior to January 1, 1982, and thereafter continuously resided in the United States in an unlawful status for the duration of the requisite period.

On appeal, the applicant asserts that the director erred.

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 245(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)(1).

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)(1) 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

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 submitted sufficient credible evidence to meet her burden of establishing that she (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. Here, the applicant has failed to meet this burden.

At part #30 of the Form I-687 application where the applicant was asked to list her places of residence in the United States she indicated that she resided in Pennsylvania and Maryland but did not indicate the time period. She indicated at part #33 of her Form I-687 application that she was employed in Maryland but the occupational title and time frame is left out. The other employment listed shows the applicant as an executive officer for the Embassy of Ghana but the time frame again is omitted. At part #32, she lists one absence from the United States to visit her family in Ghana from June 1987 to February 1988.

On September 27, 2006, the applicant was interviewed in connection with her Form I-687 application. The applicant stated that she first entered the United States in May 1981 as a visitor.

In an attempt to establish entry into the United States before January 1, 1982 and continuous unlawful residence in the United States, the applicant provided documents that relate to the applicant's claim of continuous residence in the United States. On appeal, the AAO will consider only evidence that is relevant to the requisite period, i.e., affidavits from

The affidavit from states that he first met the applicant in the summer of 1981 in Bronx, New York. The affiant states that the applicant and her father lived with him at from summer of 1981 until 1986. However, the applicant did not list a New York address on her Form I-687 application. The affidavit from states that she first met the applicant in Ghana on June 8, 1981 when the applicant was 18 months old. The affiant has not explained how she met the applicant in Ghana in June of 1981 when the applicant claims to have been in the United States since May of 1981.

The affidavits have neither confirmed the applicant's residency nor entry into the United States prior to January 1, 1982. The affidavits do not include sufficient detailed information about the applicant and the applicant's unlawful entry and continuous residency in the United States since 1981. The affiants also fail to indicate any other details that would lend credence to their claimed acquaintance with the applicant and the applicant's residence in the United States during the requisite period. The affidavits fail to establish the applicant's entry into the United States prior to January 1, 1982 and her continuous unlawful residence in the United States for the duration of the requisite period. To be considered probative and credible, witness affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Upon review, the AAO finds that, individually and together, the affiant's affidavits do not contain sufficient detail to establish the reliability of their assertions. Therefore, they have little probative value.

In the instant case, the applicant has failed to submit sufficient evidence to overcome the director's denial. The lack of details and the inconsistencies that exist in the above noted evidence calls into question the credibility of the applicant's claim of continuous unlawful residence in the United States throughout the requisite period. The affiant's affidavits while providing some evidence of the applicant's presence in the United States are insufficient to establish the applicant's 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 requisite period.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that she entered the United States before January 1, 1982 and 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.