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U.S. Citizenship
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Services

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FILE: [REDACTED] Office: NATIONAL BENEFITS CENTER Date: FEB 04 2008
MSC 06 098 25171

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. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

A handwritten signature in black ink, appearing to read "R. 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 Director, National Benefits Center. 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 January 6, 2006. 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 observed that the applicant had not provided any evidence in support of her application other than proof of her identity and her own testimony. The director denied the application as 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 states that she does not have any formal proof of her entry to the United States and that it is difficult for her to show that she meets the eligibility requirements. She submits copies of photographs and three affidavits in support of the appeal.

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)(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).

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.* 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 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 demonstrate that she resided in the United States from prior to January 1, 1982 through the date she attempted to file a Form I-687 application with the Service in the original legalization application period of May 5, 1987 to May 4, 1988. Here, the submitted evidence is not relevant, probative, and credible.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on January 6, 2006. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant showed her first address in the United States to be at [REDACTED] in Pacoima, California from December 1985 until January 1994. The applicant did not state that she had a residence in the United States prior to January 1, 1982, nor did she indicate that she resided in the United States between 1982 and December 1985. The applicant's statements on Form I-687 suggest that she is ineligible for temporary resident status, because she cannot meet the continuous residence requirement set forth at Section 245A(a)(2) of the Act. At part #33 of the Form I-687, where applicants were asked to list all employment in the United States since entry, the applicant listed no employment in the United States during the requisite period.

The applicant has the burden of proving by a preponderance of the evidence that she has resided in the United States for the requisite period. 8 C.F.R. § 245a.2(d)(5). To meet her burden of proof, an applicant must provide evidence of eligibility apart from her own testimony. 8 C.F.R. § 245a.2(d)(6). The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that an applicant may submit 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 pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The only evidence the applicant submitted in support of her application was her birth certificate. While this evidence provides proof of the applicant's identity, it does not support her claim of continuous residence and physical presence in the United States during the requisite periods. Accordingly, the director issued a Notice of Intent to Deny (NOID) on March 29, 2006, advising the applicant that she failed to provide evidence of her entry to the United States prior to January 1, 1982 and evidence of her continuous residence for the duration of the requisite period.

On April 6, 2006, the applicant submitted a statement in which she indicated that she entered the United States "since 1981." She stated that she was living in the United States with her employer and had no other evidence or records to provide. As noted above, the applicant did not indicate on her Form I-687 application that she was residing in the United States since 1981, nor did she indicate that she was employed in the United States prior to 2003. Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The director denied the application on June 16, 2006. In denying the application, the director observed that there was no evidence in the record of the applicant's continuous residence in the United States during the requisite period apart from the applicants own testimony. The director concluded that this evidence was insufficient to establish the applicant's eligibility for temporary residence under Section 245A of the Act.

On appeal, the applicant states that the director's allegation that she failed to present evidence that she entered the United States "prior to January 1981" is not true. The applicant indicates that there was a misunderstanding and states that she is submitting the statements of people who have known her for a long time. The applicant submits the following evidence in support of her appeal:

1. Copies of eight (8) photographs that appear to depict the applicant with her family or friends. As the dates of the photographs and the locations in which they were taken cannot be determined, the photographs have no probative value in establishing the applicant's continuous residence in the United States during the requisite period.
2. A copy of a California identification card issued to the applicant on July 2, 1990. This document is dated outside the requisite period and is not relevant to a determination regarding the applicant's continuous residence in the United States from 1981 to 1988.
3. An affidavit from [REDACTED] dated June 28, 2006. [REDACTED] states that he met the applicant in December 1986 and that she was living at [REDACTED] in Pacoima, California at that time. He states that he has seen the applicant frequently, and attests to her good moral character. [REDACTED] provided a copy of his permanent resident card as proof of his identity. It is noted that the applicant stated on her Form I-687 that she was living at [REDACTED] in [REDACTED]

Pacoima, California from December 1985 until 1994, and that she moved to the [REDACTED] address on January 26, 1994. Because the information provided by [REDACTED] conflicts with the applicant's own statements regarding her place of residence during the requisite period, his statement lacks credibility. Furthermore, his statement is lacking in detail, as he does not indicate how he first met the applicant, or how frequently or under what circumstances he saw her during the requisite period. He does not claim to have any knowledge of the applicant's residence in the United States prior to December 1986. Because the information provided in the affidavit is overly general and conflicts with the applicant's own statements, its probative value is extremely limited.

4. An affidavit from [REDACTED] dated June 28, 2006. [REDACTED] states that she met the applicant in January 1986 and that she is able to date her acquaintance with the applicant because she is a friend of the applicant and has been residing in the same area. She attests to the applicant's good moral character and states that she has seen the applicant frequently. The affiant provided a copy of her expired resident alien card as proof of her identity. Here, the affiant does not indicate how she met the applicant or how frequently or under what circumstances she saw her during the requisite period, nor does she provide any details of the events and circumstances of the applicant's residence that would provide credibility to her claim that she has known her as a friend for 20 years. She does not provide any verifiable information, such as the address at which the applicant was residing during the requisite period, nor does she claim to have any knowledge of the applicant's residence in the United States for the period from 1981 to December 1985. Because it covers only a portion of the requisite period and is lacking in significant detail, [REDACTED]'s statement has limited probative value.
5. An affidavit from [REDACTED] dated June 29, 2006. [REDACTED] states that she met the applicant at a family reunion in March 1985, that she still meets her at family reunions, and that the applicant is an honest and hardworking person. Here, the applicant did not indicate with any specificity where she first met the applicant, whether she has direct, personal knowledge of her residence in the United States, how frequently she saw the applicant during the requisite period, what her relationship with the applicant is, or whether she herself was in the United States during the requisite period. She does not state that the family reunion at which she met the applicant was even in the United States. Furthermore, as noted above, the applicant did not state on her Form I-687 that she was in the United States prior to December 1985, which raises further questions as to whether [REDACTED] first met the applicant in the United States. This affidavit is also significantly lacking in detail and its probative value is thus very limited.

Based on the foregoing discussion, the evidence submitted on appeal falls significantly short of establishing the applicant's eligibility for temporary residence under section 245A of the Act. Although two of the affiants claim to have knowledge of the applicant's residence in the United States since 1986, the record remains devoid of evidence that the applicant continuously resided in the United States from 1981 through 1985, apart from the applicant's own inconsistent testimony. The fact that the applicant indicated no residences in the United States prior to December 1985 on her Form I-687 application, which she signed under penalty of perjury, is particularly damaging to her later claim that she has resided in the United States since 1981.

As is stated above, 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). The applicant has been given the opportunity to satisfy her burden of proof with a broad range of evidence pursuant to 8 C.F.R. § 245a.2(d)(3). However, this applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period, has in fact identified no residences in the United States prior to December 1985, and has submitted only three attestations from individuals, none of whom claim to have known the applicant prior to 1985 or to have any knowledge of her residences for the duration of the requisite period.

The absence of sufficiently detailed, consistent 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 reliance upon documents with minimal probative value, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application 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.