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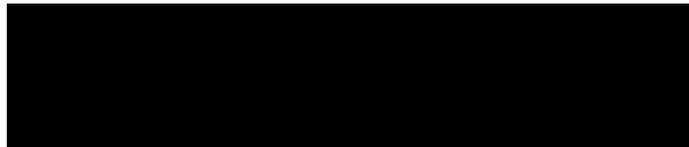
U.S. Department of Homeland Security
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U.S. Citizenship
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FILE: [REDACTED]
MSC 04 307 11038

Office: NEW YORK

Date: FEB 28 2008

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.


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, 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 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 found the affidavits submitted in support of the application to be deficient in establishing the applicant's residence during the requisite time period and denied the application, concluding that 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 challenges the director's findings, claiming that the affidavits submitted to support her claim are credible and amenable to verification.

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 Immigration and Nationality Act (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).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and 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 alien 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.* 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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that she resided in the United States during the requisite time period. Here, the applicant has failed to meet that burden. The documentation submitted in support of the applicant's claim includes the following:

1. A handwritten attestation dated July 10, 2005 from [REDACTED] who claimed that he met the applicant in the winter of 1981. The affiant discussed where he first met the applicant and the circumstances of their encounter. Although the affiant claimed that he saw the applicant "several times throughout the community," he did not specify the frequency of his encounters with the applicant. As such, the affiant has not established that he had the requisite knowledge to attest to the applicant's continuous residence during the relevant time period.
2. Two affidavits from [REDACTED]. The first affidavit was dated July 6, 2005 and included the affiant's claim that he/she has known the applicant since 1982. The affiant explained how he/she came to know the applicant and stated that the applicant came to the Washington, D.C. area, where the affiant resided, to sell African jewelry and accessories. In the second affidavit, dated February 13, 2006, the affiant reiterated how he/she first met the applicant and claimed that he/she saw the applicant in the 1980s and again in 1996. Although the affiant claimed that the applicant came to the United States in the 1980s, the basis for this knowledge is through a third-party, who has not testified on behalf of the applicant. The affiant did not claim to have first-hand knowledge of the applicant's arrival to the United States. Furthermore, the affiant did not claim to have had frequent encounters (either in person or via telephone) with the applicant during the requisite time period, which is explained by the fact that the affiant has resided in the Washington, D.C. area, not in New York, where the applicant claims to have resided since her arrival to the United States.

As such, the affiant does not appear to have the basis for knowing whether the applicant has resided in the United States since prior to January 1, 1982 or that the applicant's purported residence was continuous during the relevant time period.

3. An affidavit dated February 9, 2006 from [REDACTED] who provided the year and address of his first encounter with the applicant. The affiant stated that he and the applicant were both street vendors and eventually became friends after various encounters. However, the affiant did not specify how frequently he saw the applicant, nor did he provide any other information about the events and circumstances of the applicant's purported residence in the United States during the requisite time period.

After reviewing the above documentation, the director properly concluded that the affidavits the applicant submitted to support her claim were deficient. Neither the affiant in No. 1 nor 2 above established a sufficient basis for his/her claimed knowledge of the applicant's continuous residence. While the affiant in No. 3 above was not similarly deficient, his affidavit lacked the necessary details and information to lend credibility to a purported 25-year relationship with the applicant.

On appeal, the applicant addresses the lack of additional documentation to support her claim, stating that the passage of time makes it difficult to provide further proof of her residence. However, the quantity of the information submitted was not the basis for the director's adverse decision, nor is it the basis for the AAO's current findings. The absence of sufficiently detailed supporting 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 she 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-*, 20 I&N Dec. 77. 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.