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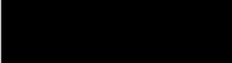


U.S. Citizenship
and Immigration
Services

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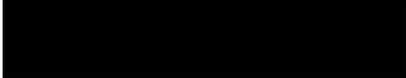
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FILE: 
MSC-06-102-14279

Office: LOS ANGELES

Date: **JUL 22 2008**

IN RE: Applicant: 

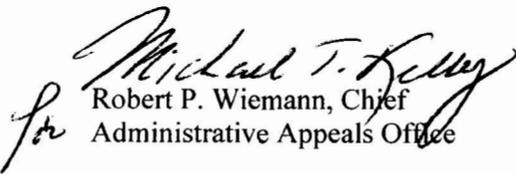
APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

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.


for 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, Los Angeles. 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 10, 2006 (together, the I-687 Application). 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, specifically noting that the applicant “failed to establish [her] eligibility for the benefit sought.” 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 submitted a Form I-694 Notice of Appeal of Decision Under Section 210 or 245A, a written statement, and three affidavits. In her statement, the applicant asserts that she entered the United States in 1981 when she was 11 years old. The applicant also states that she was treated poorly during her interview resulting in a situation in which “it [was] very easy to make a mistake.” As of this date, the AAO has not received a brief or any additional evidence from the applicant. Therefore, the record is complete.¹

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).

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

¹ The applicant’s appeal included a letter from [REDACTED] who identified himself as her representative. The AAO notes that Mr. [REDACTED] previously filed a Form G-28, Notice of Entry of Appearance as Attorney or Representative. In the G-28, Mr. [REDACTED] identified himself as an immigration consulting service provider. Although Mr. [REDACTED] filed a Form G-28, he is not a licensed attorney or an accredited representative authorized to undertake representations on the applicant's behalf. See 8 C.F.R. § 103.2(a)(3). Accordingly, the assertions of the immigration service provider will not be considered in this proceeding.

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).

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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.2(d)(6).

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. See 8 C.F.R. § 245a.2(d)(6). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant provides concrete information that indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

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 entered before 1982 and resided in the United States for the requisite period.

The record shows that the applicant submitted a Form I-687 Application and Supplement to Citizenship and Immigration Services (CIS) on January 10, 2006. 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 listed her first address in the United States as [REDACTED] Maywood, California, from March 1981 to September 1993. At part #33, she listed her first employment in the United States as a babysitter in Maywood, California, from March 1981 to September 1985. At part #32, the applicant listed one absence from the United States since entry. According to the Form I-687, the applicant visited Mexico from October 11, 1987 to October 30, 1987.

The applicant has provided three notarized affidavits; four letters; a copy of the applicant's California driver's license issued on October 23, 2002; and a copy of the applicant's employment authorization document issued on March 17, 2006. The applicant's California driver's license and employment authorization card are evidence of the applicant's identity, but do not demonstrate that she entered before January 1, 1982 and resided in the United States for the requisite period. The following evidence relates to the requisite period:

- A notarized affidavit from [REDACTED] dated August 23, 2006. The declarant states that he lives in Maywood, California and that he has known the applicant since she was born because he is her uncle. The declarant states that the applicant entered the United States in March 1981 when she was 11 years old. He states that she "came to live with [him] at his house [located] at [REDACTED], Maywood, California 90270." The declarant adds that he has lived at the same house from January 1981 to the present. The statement does not supply enough details to lend credibility to his claim that the applicant lived with him from March 1981. Although the declarant states that he has known the applicant her entire life and that he is her uncle, he does not indicate how he dates when she first moved to the United States or how long she lived in his house. Given these deficiencies, this statement has minimal probative value in supporting the applicant's claims that she entered the United States in 1981 and resided in the United States for the entire requisite period.
- A notarized affidavit from [REDACTED] dated August 23, 2006. The declarant states that he lives in Apple Valley, California and that he first met the applicant in 1982 "around January or February." He states that he met the applicant "through some friends and eventually became her friend." He adds that he "was a young child at the time when [he] met [the applicant]" but that he will always remember her because she introduced him to his wife. Although the declarant states that he has known the applicant in the United States since 1982, the statement does not supply enough details to lend credibility to a more than 24-year relationship with the applicant. For instance, the declarant does not indicate under what circumstances he met the applicant in 1982, how he dates his

initial acquaintance with the applicant, or how frequently he had contact with the applicant. Given these deficiencies, this statement has minimal probative value in supporting the applicant's claims that she entered the United States in 1981 and resided in the United States for the entire requisite period.

- A notarized affidavit from [REDACTED] dated August 23, 2006. The declarant states that he lives in Victorville, California and that he first met the applicant in May 1981 "at a family reunion." He states that the applicant "has been a family friend for many years now." He adds that he has "kept in contact with [the applicant] through family [re]unions" and that he "frequently had casual contact with her when [he] went to visit her uncle." Although the declarant states that he has known the applicant in the United States since 1981, the statement does not supply enough details to lend credibility to a more than 25-year relationship with the applicant. Further, this affidavit does not establish contact with the applicant sufficient to attest to her residence for the requisite period. Given these deficiencies, this statement has minimal probative value in supporting the applicant's claims that she entered the United States in 1981 and resided in the United States for the entire requisite period.
- A letter that is not notarized from [REDACTED] dated January 7, 2006. The declarant states that she has known the applicant since 1988 and that they worked together in a donas [sic] shop in Maywood, California. She adds that she and the applicant attended the same church. The requisite time period began on January 1, 1982 and ended on May 4, 1988. The declarant states that she met the applicant in 1988 but does not give any other details. Therefore, the AAO is unable to determine if the declarant met the applicant during the requisite period. Given these deficiencies, this statement has no probative value in supporting the applicant's claims that she entered the United States in 1981 and resided in the United States for the entire requisite period.
- A letter that is not notarized from [REDACTED] dated April 5, 2006. The declarant states that "when [she] met [the applicant] she lived at [REDACTED] in Maywood, California." The declarant also states that the applicant was 19 years old at the time and lived with her aunt and uncle. The declarant adds that when she purchased a Yum Yum Donuts franchise in 1988 she asked the applicant to work for her because the applicant had worked for the company since 1985 and "knew all the trades of this business." According to the Form I-687, the applicant was born on November 9, 1969. Therefore, the applicant became 19 years old on November 9, 1988. The requisite time period began on January 1, 1982 and ended on May 4, 1988. The declarant states that she met the applicant when the applicant was 19 years old and therefore, after the requisite time period. Further, the declarant provides no information as to the basis of her statement that the applicant worked for a donut franchise since 1985. Given these deficiencies, this statement has no probative value in supporting the applicant's claims that she entered the United States in 1981 and resided in the United States for the entire requisite period.

- A handwritten letter that is not notarized from [REDACTED] dated April 8, 2006. The declarant states that he has known the applicant “since about 1981” through her uncle. The declarant states that he is a good friend of the applicant’s uncle and that he would see her at family reunions when “she was a little girl.” The declarant states that he would also see the applicant at church or “at the house.” The declarant adds that “later in life, [he and the applicant] kept in contact on and off.” Finally, the declarant states that his family and the applicant’s family know each other and are “good friends.” Although the declarant states that he has known the applicant in the United States since “about 1981,” the statement does not supply enough details to lend credibility to a more than 25-year relationship with the applicant. For instance, the declarant does not indicate under what circumstances he met the applicant in 1981, how he dates his initial acquaintance with the applicant, or how frequently he had contact with the applicant. Given these deficiencies, this statement has minimal probative value in supporting the applicant's claims that she entered the United States in 1981 and resided in the United States for the entire requisite period.
- A handwritten letter that is not notarized from [REDACTED] dated April 5, 2006. The declarant states that she has known the applicant since 1986. The declarant also states that she met the applicant through the declarant’s sister and the declarant and the applicant became “good friends.” The declarant adds that she and the applicant “lived in the same areas for [the] same years and stayed in touch constantly.” Although the declarant states that she has known the applicant in the United States since 1986, the statement does not supply enough details to lend credibility to a more than 20-year relationship with the applicant. For instance, the declarant does not indicate under what circumstances she met the applicant in 1986, how she dates her initial acquaintance with the applicant, or how frequently she had contact with the applicant. Given these deficiencies, this statement has minimal probative value in supporting the applicant's claims that she entered the United States in 1981 and resided in the United States for the entire requisite period.
- A handwritten letter that is not notarized from [REDACTED] dated April 5, 2006. The declarant states that he has known the applicant “since 1982.” The declarant states that he “met [the applicant] through a friend and [they have] stayed in touch on and off for almost 25 years.” The declarant also states that he and the applicant “currently live in Victorville, California” and have a very good and “strong friendship.” Although the declarant states that he has known the applicant in the United States since 1982, the statement does not supply enough details to lend credibility to a more than 24-year relationship with the applicant. For instance, the declarant does not indicate under what circumstances he met the applicant in 1982, how he dates his initial acquaintance with the applicant, or how frequently he had contact with the applicant. Further, the declarant provides no particular information regarding the applicant’s residence during the requisite period. Given these deficiencies, this statement has minimal probative value in

supporting the applicant's claims that she entered the United States in 1981 and resided in the United States for the entire requisite period.

The remaining evidence in the record is comprised of the applicant's statements, in which she claims to have entered the United States in 1981 when she was 11 years old and to have resided for the duration of the requisite period in California. As noted above, to meet her burden of proof, the applicant must provide evidence of eligibility apart from her own testimony. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). In this case, her assertions regarding her entry are not supported by any credible evidence in the record.

The director issued a notice of intent to deny (NOID) on March 29, 2006. The director denied the application for temporary residence on July 27, 2006. In denying the application, the director found that the applicant failed to establish that she entered the United States prior to January 1, 1982 or that she met the necessary residency or continuous physical presence requirements. Thus, the director determined that the applicant failed to meet her burden of proof by a preponderance of the evidence.

On appeal, the applicant asserts that she entered the United States in 1981 when she was 11 years old. The applicant also states that she was treated poorly during her interview resulting in a situation in which "it [was] very easy to make a mistake." While the AAO is not able to verify the applicant's claims regarding her treatment during the interview, the AAO agrees that all applicants should be treated with respect during USCIS interviews. However, upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director's conclusion that the applicant has not established by a preponderance of the evidence that she is eligible for the benefit sought.

In this case, the absence of sufficient credible and probative documentation to corroborate the applicant's claim of continuous residence for the 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 the applicant 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.