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FILE:



Office: LOS ANGELES

Date: **11/24/2008**

MSC 05 265 10981

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.

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, and is now before the Administrative Appeals Office 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. Specifically, the director noted that the affidavits submitted in support of the applicant's claim lacked specific information about her presence in the United States during the statutory period. 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 has lived in the United States since prior to January 1, 1982 and resubmits documents provided earlier in this proceeding to support her claim.

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 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 presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "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. In the present matter, the applicant has not met her burden.

In support of the Form I-687, where the applicant claimed that she had resided in the United States during the statutory period, the applicant provided the following:

1. A statement from [REDACTED] who claimed that he had been friends with the applicant since 1981 and claimed to have known of the applicant's attempt to file her application in August 1987. It is noted that [REDACTED] did not specify the month he purportedly met the applicant and provided no information about the events and/or circumstances of the applicant's residence in the United States during the statutory period. As such, this statement contains limited information and will only be afforded minimal evidentiary weight. Additionally, this statement used a male pronoun ("his") when speaking of the applicant's arrival to the United States and also referred to the applicant as a name that the applicant has not claimed to have used. Lastly, the statement contains two different dates. The head of the statement is dated June 16, 2005, while the bottom of the statement indicates that it was executed on May 16, 2005. These errors further detract from this document's reliability and the veracity of [REDACTED] statements.
2. Three photocopied envelopes and one photocopied postcard addressed to the applicant at the address she claimed to have resided during the statutory period. It is noted that two of the envelopes bear no postage dates or stamps and merely contain handwritten dates of October 1986 and September 1987, respectively. While one other envelope contains a postage date, it contains no stamp to indicate that it was actually mailed on December 19,

1986 as the date suggests. While the postcard contains a postage date and postage stamps, its authenticity cannot be determined, as the record has not been supplemented with the original document. Thus, all four documents lack probative value for the various reasons cited herein, and will not be afforded weight as evidence of the applicant's residence in the United States during the statutory period.

3. A letter dated April 28, 2005 from [REDACTED] who claimed that she had known of the applicant's residence in the United States since 1982. [REDACTED] claimed that the applicant babysat for her and stated that the applicant's address at the time was [REDACTED] Newhall, California, the same address [REDACTED] claimed as her own. It is noted that the applicant claimed to have resided at [REDACTED] Newhall, California during the entire statutory period and she never claimed residence at [REDACTED] Newhall, California. This inconsistency casts doubt on the reliability of the information provided by [REDACTED]. Furthermore, [REDACTED] provided no details about the applicant's residence to lend credibility to her alleged 23-year relationship with the applicant.
4. A letter dated February 2, 2005 from [REDACTED] who claimed that she met the applicant during the applicant's alleged residence at [REDACTED], Newhall, California and further stated that she has kept in touch with the applicant ever since. However, Ms. [REDACTED]'s statements lack any details about the events and/or circumstances of the applicant's residence in the United States during the statutory period. As such, the statement will only be afforded minimal evidentiary weight.
5. Identical letters from [REDACTED], dated March 26, 2005; [REDACTED] and [REDACTED] both dated March 26, 2005 and notarized April 28, 2005; [REDACTED] and [REDACTED], both dated February 2, 2005 and notarized April 28, 2005; [REDACTED] dated March 28, 2005 and notarized April 28, 2005; [REDACTED] dated February 12, 2005; [REDACTED] dated March 30, 2005 and notarized April 28, 2005; and [REDACTED] dated and notarized April 28, 2005. With the exception of the notary stamps affixed to the various letters as indicated, all of the statements are identical in content in that all of the declarants claimed that the applicant has resided in the United States since 1981 and was their neighbor. It is noted that none of the individuals provided the address where they and the applicant purportedly resided, nor did they provide details about the events and/or circumstances of the applicant's residence in the United States during the statutory period. As such, these statements will only be given minimal evidentiary weight.
6. An affidavit dated April 28, 2005 from [REDACTED] who claimed that he met the applicant at a relative's birthday party in Pacoima, California in 1981. Although the affiant attested to the applicant's good moral character and claimed that he still keeps in touch with the applicant, he failed to lend credibility to his claim by providing details about the events and/or circumstances of the applicant's residence in the United States during the statutory period. As such, this affidavit will only be given minimal evidentiary weight.

In a decision dated September 7, 2006, the director denied the application, concluding that the applicant failed to submit sufficient supporting evidence to establish that she resided in the United States during the statutory period.

On appeal, the applicant restates her claim and resubmits previously submitted documentation, whose probative value, or lack thereof, has been fully addressed in the discussion above. The applicant also provides an additional letter dated July 12, 2006 from [REDACTED] who clarified that she first met the applicant in 1985. It is noted that [REDACTED]'s statement has minimal probative value as it contains no further information about her relationship with the applicant or any details regarding the applicant's residence in the United States during the statutory period.

The applicant also provided a letter dated July 22, 2006 from [REDACTED] who claimed that there was an error in the statement from [REDACTED]. Specifically, [REDACTED] claimed that the letter erroneously referenced [REDACTED] and claimed that the applicant's name was intended to appear in place of [REDACTED]. [REDACTED] apologized and further stated that "[REDACTED]" gave his original documents and that such documents were misplaced. However, there is no explanation as to who Mr. [REDACTED] is and how he is relevant to the present proceeding. Additionally, [REDACTED] failed to provide her basis for claiming that [REDACTED] statement contained a typographical error, as there is no accompanying statement from [REDACTED] himself, corroborating [REDACTED] claim. Thus, neither [REDACTED] statement nor [REDACTED]'s earlier statement (based on the analysis provided above) will be afforded evidentiary weight in this proceeding.

In summary, the applicant has provided deficient documents and statements from third parties to corroborate her claim that she continuously resided in the United States during the statutory period. 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. As previously stated, 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). 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.