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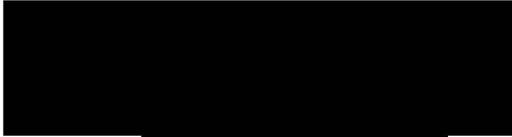
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] MSC 05 354 12930

Office: NEW YORK

Date: JUL 24 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. 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, 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. Specifically, the director noted that the applicant failed to provide sufficient additional evidence to overcome the adverse findings cited in the notice of intent to deny (NOID). 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 disputes the director's conclusion, stating that the affidavits she previously submitted in support of her application are sufficient to establish eligibility for temporary resident status.

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. Here, the applicant has not met this burden. The record shows that the applicant failed to submit evidence initially in support of her Form I-687. Accordingly, the director issued the first NOID dated November 15, 2005, informing the applicant that she had not established eligibility for temporary resident status.

In response to the NOID, the applicant submitted two affidavits—one affidavit dated December 5, 2005 from [REDACTED] and another affidavit dated December 14, 2005 from [REDACTED]. Both affiants provided the addresses where the applicant has purportedly resided in the United States since November 1981 and both claimed to have met the applicant in 1981. However, only [REDACTED] provided a brief statement about the circumstances of her first encounter with the applicant. The other affiant provided no explanation as to how he met the applicant and neither affiant provided any details about the events and/or circumstances of the applicant's purported residence in the United States during the statutory period. As such, neither statement lends credibility to either affiant's claimed 24-year relationship with the applicant.

On June 26, 2006, the director issued another NOID in response to the applicant's oral testimony, which she provided at an interview conducted on May 11, 2006. Specifically, the director noted that the applicant failed to provide evidence of her claimed entry into the United States in 1979. The director also referred to the applicant's absence from the United States from January 31, 1987 to March 4, 1987, which the director determined as an absence of 60 days and noted that the applicant had provided no emergent reason for the length of her absence.

In response to the second NOID, the applicant submitted a letter dated July 14, 2006, stating that the affidavits previously submitted were sufficient to establish her eligibility. The applicant also disputed the director's finding that her absence in 1987 was for a period of 60 days, claiming that the dates she

provided at her interview indicate that her absence lasted only 32 days. The applicant also provided two additional affidavits from the same affiants as those named above. The additional affidavit from Ms.

was signed on May 11, 2006 and stated that the affiant has known the applicant since 1981 and claims that the two have been friends ever since. The other affidavit from M [REDACTED] was also signed on May 11, 2006 and stated that the affiant has known the applicant since 1981 and that the applicant is a person of good moral character. Again, neither affiant provided any details about the events and/or circumstances of the applicant's purported residence in the United States during the statutory period, or any details that would lend credibility to either affiant's claimed 24-year relationship with the applicant.

On September 26, 2006, the director denied the application, concluding that the applicant has not provided sufficient documentation to overcome the adverse findings cited in the NOID that was issued in 2006. The director again noted the applicant's absence from the United States in 1987. The director further observed that the applicant resubmitted the same affidavits from the same affiants.

The AAO notes, however, that the applicant properly disputed the director's calculation of the time period of her alleged 1987 absence. Contrary to the director's determination, the applicant did not claim to have been absent from the United States for a time period that exceeded 45 days. As such, the adverse finding that resulted from the director's erroneous calculation is hereby withdrawn. In addition, while the record shows that the affidavits most recently submitted originated from the same affiants as the affidavits submitted in response to the first NOID, the affidavits themselves are not identical to those that were initially submitted. As such, the director's comment suggesting that the applicant resubmitted the same affidavits is also hereby withdrawn.

However, the director's adverse decision was warranted in light of the deficient supporting documents submitted in support of the applicant's claim. As previously noted, none of the affidavits submitted contain probative information about the events and/or circumstances of the applicant's residence in the United States during the statutory time period. Rather, the statements contain mere attestations that the applicant has resided in the United States as claimed and address the applicant's character.

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.