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**U.S. Citizenship
and Immigration
Services**

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FILE:

MSC-05-197-11430

Office: BALTIMORE

Date: **JUN 20 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.

A handwritten signature in black ink, appearing to read "Robert P. 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 District Director, Baltimore. 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. 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 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 stated that her statements and documents are sufficient to prove her eligibility for temporary resident status. She stated that her affidavits should not be discounted, she demonstrated her eligibility for temporary resident status during her interview with the immigration officer, and the absence of documentary evidence should not be a reason to deny her application. The applicant asserted that the difficulty of providing documentation after the passage of time should be taken into consideration. The applicant also responded to an apparent contradiction in the documents she submitted that was raised by the director. The applicant requested that two affidavits she submitted be given consideration.

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).

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) means 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 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.* at 80. 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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet her burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on April 15, 2005. 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 listed the following addresses during the requisite period: [REDACTED], New York, New York from December 1981 to May 1985; and [REDACTED] t., New York, New York from June 1985 to December 1989. At part #33 where applicants were asked to list all employment in the United States since entry, the applicant indicated only that she was self-employed as a hairdresser on 125th Street in New York, New York from July 1983 to December 1989.

In an attempt to establish that she resided in the United States throughout the requisite periods, the applicant provided two attestations. She provided a letter dated December 15, 2005 from Dr. [REDACTED] printed on Harlem Hospital Center letterhead. The words "Re: January 1982" are printed at the top of the letter. The body of the letter states that the applicant requires physical therapy, has mild gross motor developmental delay, and requires various specified types of therapy. The letter also states that the applicant was originally brought to [REDACTED] by her aunt for a tooth extraction. This letter fails to specifically state that the applicant resided in the United States during the requisite period, nor is there any indication that the treatment described occurred or was recommended during the requisite period. The letter also does not explain its reference to January 1982. Therefore, this letter is given no weight in determining whether the applicant has established that she resided in the United States during the requisite period. It is noted that CIS contacted Harlem Hospital Center on February 22, 2008 to verify the statements of [REDACTED]. The individual who answered the telephone refused to confirm or deny [REDACTED]'s employment and refused to provide information about the applicant. This casts additional doubt on the credibility of the letter.

The applicant also submitted an affidavit from [REDACTED] which states that the affiant met the applicant on 27th Street and 6th Avenue in 1981. The affiant stated that he met the applicant when he was working as a bike messenger and he would see the applicant and her aunt selling merchandise on the corner of 27th Street and 6th Avenue. He stated that he and the applicant would speak to each other everyday until they became friends. This affidavit fails to state that the applicant resided in the United States at any time other than during 1981. In addition, the affidavit conflicts with the applicant's Form I-687 where she failed to list employment selling merchandise on 27th Street and 6th Avenue during the requisite period. This inconsistency calls into question the affiant's ability to confirm the applicant's residence during the requisite period.

In denying the application the director noted 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 identified the inconsistency between the applicant's statements on her Form I-687 regarding her employment and [REDACTED]'s statements in his affidavit.

On appeal, the applicant stated that her statements and documents are sufficient to prove her eligibility for temporary resident status. The applicant also stated that she did not see any conflict between her statements on her Form I-687 and [REDACTED]'s statement. She stated that she was self-employed during the requisite period doing many duties including selling items and hair braiding. 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 applicant failed to provide additional objective evidence in response to the inconsistency raised by the director. Therefore, the applicant's explanation on appeal is found to be insufficient to overcome this inconsistency.

In summary, the applicant has submitted attestations from only two people in support of her claim to have resided in the United States during the requisite period. Both attestations fail to state that the applicant resided in the United States during the requisite period. The letter from [REDACTED] is also inconsistent with the applicant's Form I-687.

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 contradictions between the applicant's Form I-687 and the documents she submitted, and given her 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 for the requisite period 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.