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**U.S. Citizenship  
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Services**

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FILE:

MSC-05-260-11759

Office: NEW YORK

Date:

**JUN 30 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:

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, New York. 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 June 17, 2005 (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 submit additional evidence for consideration" in response to the director's April 15, 2006 notice of intent to deny. 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, counsel submitted a Form I-694 Notice of Appeal of Decision Under Section 210 or 245A and stated that his written brief or statement was attached. On the Form I-687, counsel states that "due weight was not accorded the witness affidavits which testify to [the applicant's] presence in the United States since before January 1, 1982." There is no brief or statement from counsel in the record of proceeding. On May 13, 2008, the AAO sent counsel a facsimile regarding the absence of the aforesaid appellate material. As of this date, the AAO has not received a brief or any additional evidence from counsel or the applicant. Therefore, the record is complete.

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 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, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 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 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 June 17, 2005. 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] Jamaica, New York, from October 1981 to February 1996. At part #33, she listed her first employment in the United States as a private duty caregiver in New York City, New York, from December 1981 to present. At part #32, the applicant listed two absences from the United States since entry. According to the Form I-687, the applicant visited Canada from August 1987 to August 1987 and Guyana from April 1995 to April 1995.

The applicant has provided two notarized affidavits, a copy of her passport, and a copy of her New York identification card. The applicant's passport and New York identification 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 form-letter affidavit from [REDACTED] dated December 14, 2005. The declarant states that she lives in Westbury, New York. The declarant states that the applicant lived at [REDACTED], Rosedale, NY 11422 from 1980 to 1984 and at [REDACTED] Jamaica, New York 11434 from 1984 to present. The Form I-687 does not include an address for the applicant in Rosedale, New York and although the Form I-687 does include the address in Jamaica, New York, the form states that the applicant lived at that address from "July 2001 to present." Furthermore, the affidavit states that the applicant resided in Rosedale beginning in 1980. However, as stated in the director's notice of intent to deny dated April 15, 2006, the applicant claims to have entered the United States from Canada in October 1981 and not in 1980. Although the declarant includes addresses for the applicant, she does not indicate when or where she met the applicant, how long she has known the applicant in the United States, or any details to lend credibility to a relationship with the applicant. Further, the declarant does not specify the basis of her knowledge about 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.
- A notarized form-letter affidavit from [REDACTED] dated December 14, 2005. The declarant states that he lives in Roosevelt, New York. The declarant states that the applicant lived at [REDACTED], Rosedale, NY 11422 from 1980 to 1984 and at [REDACTED], Jamaica, New York 11434 from 1984 to present. The Form I-687 does not include an address for the applicant in Rosedale, New York and although the Form I-687 does include the address in Jamaica, New York, the form states that the applicant lived at that address from "July 2001 to present." Furthermore, the declarant does not state the basis of his knowledge about the applicant's residence and addresses. However, as stated in the director's notice of intent to deny dated April 15, 2006, the applicant

claims to have entered the United States from Canada in October 1981 and not in 1980. Although the declarant includes addresses for the applicant, he does not indicate when or where he met the applicant, how long he has known the applicant in the United States, or any details to lend credibility to a relationship with the applicant. Furthermore, the declarant does not state the basis of his knowledge about the applicant's residence and addresses. 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 and to have resided for the duration of the requisite period in New York. 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 November 15, 2005 and on April 15, 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, counsel states that "due weight was not accorded the witness affidavits which testify to [the applicant's] presence in the United States since before January 1, 1982." Neither counsel nor the applicant have submitted any additional evidence in support of her claim that she was physically present or had continuous residence in the United States during the entire requisite period or that she entered the United States in 1981.

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.