

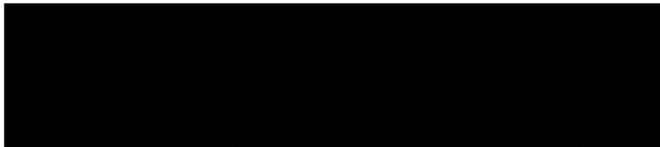
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U.S. Citizenship
and Immigration
Services

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FILE:

MSC-05-145-10655

Office: NEW YORK Date:

MAR 31 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. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

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 February 22, 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 information and documentation [that the applicant] submitted are insufficient to overcome the grounds for denial.” 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 disagrees with the director’s decision and states that she has been in the United States since 1981. On the Form I-694 Notice of Appeal of Decision Under Section 210 or 245A, the applicant requests another interview. On appeal, the applicant submits a color photocopy of a jewelry store receipt dated July 15, 1981.

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).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), “until the date of filing” shall mean until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file. 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 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 credibility of an affidavit may be assessed by taking into account such factors as whether the affiant provided some proof that he or she was present in the United States during the requisite period. 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 he 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 February 22, 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] New York, New York, from 1981 to 2004. At part #33, he listed her first and only employment in the United States as self-employed hair braider in New York, New York, from 1981 to the present.

At part #32, the applicant did not list any absences from the United States since entry. The applicant did not list any affiliations or association at part #31.

The applicant has provided two form-letter affidavits, two letters from acquaintances, a 1989 General Tax Levy from the County of Nassau, a receipt from Shah Trans/Environ Engineering, P.C. dated December 17, 1993, a receipt from Koh-I-Noor Jewelers & Boutique dated July 15, 1981, and the applicant's birth certificate. Some of the evidence submitted indicates that the applicant resided in the United States after the requisite time period. The following evidence relates to the requisite period:

- A form-letter affidavit dated December 8, 2005 and a hand-written statement from [REDACTED]. In the form-letter affidavit, the declarant states that she has known the applicant since June 1986. In the hand-written statement, the declarant states that the applicant has been her hair dresser. Although the declarant states that she has known the applicant since 1986, the statement does not supply enough details to lend credibility to a 19-year relationship with the applicant. The declarant does not indicate under what circumstances she met the applicant in 1986, how she dates her initial acquaintance with the applicant, when the applicant became her hair dresser 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 form-letter affidavit dated December 6, 2005 and a letter dated April 3, 2006 from [REDACTED]. In the form-letter affidavit, the declarant states that she has known the applicant since September 1981 and that the applicant is her "beautician and friend." In the letter, the declarant states that she met the applicant in the summer of 1981. The declarant also states that the applicant braids her hair and that she has seen the applicant almost every month. Although the declarant states that she has known the applicant since 1981, the statement does not supply enough details to lend credibility to a 24-year relationship with the applicant. The declarant does not indicate under what circumstances she met the applicant in 1981, how she dates her initial acquaintance with the applicant, or when the applicant became her hair dresser. 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 color photocopy of a receipt from Koh-I-Noor Jewelers & Boutique dated July 15, 1981. The receipt includes the applicant's name and address. Although the applicant's name and address is written on the receipt, it has minimal weight as evidence of residence.

For the reasons noted above, the documents submitted in support of the applicant's claim have been found to lack credibility or to have minimal probative value as evidence of the applicant's

residence and presence in the United States for the requisite period. According to the applicant's birth certificate, the applicant's date of birth is December 9, 1966. The applicant states that she entered the United States in 1981, when she was 15 years old. Even though she was a minor at the time, the applicant has not submitted school records or medical records.

The director issued a notice of intent to deny (NOID) on November 16, 2005 and 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 submitted a color photocopy of a jewelry store receipt dated July 15, 1981. As stated above, the receipt has minimal probative value as evidence in support of the applicant's 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.