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U.S. Citizenship
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Services

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FILE:

MSC-05-024-10026

Office: NEW YORK

Date:

MAY 22 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.


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. 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 stated that the affidavits the applicant submitted in support of her application were neither credible nor were they amenable to verification. Here, the director noted that affiants from whom the applicant submitted affidavits were contacted but were not able to verify information they provided in their affidavits. Because of this, 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 submits a statement in which she asserts that the director failed to consider clarifications made regarding affiant's statements. She goes on to say that the director erred in saying that she contacted all affiants.

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) 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 his or 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 regulation at 8 C.F.R. § 245a.2(15)(c) states that aliens who have been convicted of a felony or three or more misdemeanors are ineligible to adjust to temporary resident status.

“Felony” means a crime committed in the United States punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except when the offense is defined by the state as a misdemeanor, and the sentence actually imposed is one year or less, regardless of the term such alien actually served. Under this exception, for purposes of 8 C.F.R. § 245a, the crime shall be treated as a misdemeanor. 8 C.F.R. § 245a.1(p).

“Misdemeanor” means a crime committed in the United States, either (1) punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or (2) a crime treated as a misdemeanor under 8 C.F.R. § 245a.1(p). For purposes of this

definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor. 8 C.F.R. § 245a.1(o).

It is noted that the record shows that the applicant has been arrested as follows:

- On September 21, 1999 the applicant was arrested and subsequently charged with a violation of New York Penal Code § 240.30, aggravated harassment in the second degree, a class A misdemeanor. The applicant failed to provide a court disposition regarding this offense and the director failed to request this document from the applicant. Therefore, the AAO is unable to determine whether the applicant was convicted of this misdemeanor offense. It is noted that the record indicates that the applicant used the name Gisele Adorgloh as her own name at the time of this arrest.

Here, though the AAO is unable to determine whether the applicant was convicted of the above misdemeanor offense, one conviction for a misdemeanor alone would not render the applicant ineligible to adjust status to that of a temporary resident.

The record shows that the applicant submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on October 24, 2004. 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 showed her address in the United States during the requisite period to be [REDACTED], New York, New York from October 1981 until September 1990. At part #32 where the applicant asked to list all of her absences from the United States, she indicated that she was absent from January to February 1988 when she went to Canada to visit family. At part #33, where the applicant was asked to list all of her employment in the United States since she first entered, she showed that she was employed as a babysitter for [REDACTED] in New York City from January 1982 until October 1986 and then as a street vendor from January 1988 until the date she submitted her Form I-687. It is noted that the applicant did not show employment from October 1986 until January 1988.

The applicant has the burden of proving by a preponderance of the evidence that she has resided in the United States for the requisite period. 8 C.F.R. § 245a.2(d)(5). To meet her burden of proof, an applicant must provide evidence of eligibility apart from her own testimony. 8 C.F.R. § 245a.2(d)(6). The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that an applicant may submit to establish proof of continuous residence in the United States during the requisite period. This list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts or letters. An applicant may also submit any other relevant document pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

In support of her application, the applicant initially submitted the following documents that are relevant to the requisite period:

- A notarized letter from [REDACTED] that is dated either October or August 18, 2004. Here, the word October was initially written and the word August appears over it. In this letter, [REDACTED] states that she has known the applicant since the early 1980's. She states that she and the applicant sold things together in New York after the applicant finished babysitting. Here, [REDACTED] does not specify when in the 1980's she met the applicant. She fails to say where she met the applicant or to indicate whether it was in the United States. Similarly, she does not indicate when she sold things with the applicant on the streets of New York nor does she indicate that she knows the applicant resided in the United States during the requisite period. Because this letter does not indicate that the applicant ever resided in the United States during the requisite period, it carries no weight in establishing that she did so.
- A notarized affidavit from [REDACTED] that is dated July 30, 2004. In this affidavit, Mr. [REDACTED] states that he used to work with the applicant's boyfriend with whom she used to live. He asserts that he has personal knowledge that the applicant resided in the United States at addresses that are consistent with what the applicant showed on her Form I-687. Though this affiant shows an address at which he states he personally knew the applicant resided during the requisite period, he does not indicate when or where he met her. He does not state the frequency with which he saw the applicant during the requisite period. He does not provide dates associated with any periods of time during which he did not see the applicant during that time. He does not submit proof that he himself resided in the United States during the requisite period. Because of its significant lack of detail, this affidavit carries little weight as proof that the applicant resided in the United States during the requisite period.
- A notarized letter from [REDACTED] dated June 6, 2005. This letter was not submitted with identity documents, but was submitted with a telephone number at which the declarant could be reached. In this letter, [REDACTED] states that he has known the applicant for more than 23 years. Though he attests to her character, he does not state when he met the applicant or whether he met her in the United States. He does not state that it is personally known to him that the applicant resided in the United States at any point in time during the requisite period. Therefore, this letter carries no weight in establishing that she did so.

On September 3, 2005 the director issued a Notice of Intent to Deny (NOID) to the applicant. In this NOID, the director stated that she intended to deny the applicant for the following reasons:

1. Though the applicant claimed to have entered the United States through Canada in July 1981 she provided no evidence of that entry, such as a document showing a valid entry through Canada at that time.

2. The affidavits submitted from [REDACTED] and [REDACTED] did not appear credible or amenable to verification as none were submitted with documents identifying the affiants, proof that the affiants were in the United States during the requisite period or proof that there was a relationship between the affiants and the applicant.

The director granted the applicant 30 days within which to submit additional evidence in support of her application.

In responses to the director's NOID, the applicant submitted a letter from her attorney that is dated September 29, 2005. She further submitted the following documents in support of her application:

- A notarized letter from [REDACTED] dated September 21, 2005. Though not required to do so, [REDACTED] submitted a photocopy of her United States passport and a photocopy of an identification card from Newark Evening High School that bears the date 1981 as proof of her identity and as proof that she resided in the United States in 1981. There are two copies of this letter in the record; in one copy of this letter, [REDACTED] indicates that she is a native and citizen of the United States. In the second copy the word "native" is not present. It is noted here that the passport submitted by [REDACTED] shows that she was born in Haiti. This letter goes on to say that the affiant has known the applicant since 1986. She states that the applicant babysat for her daughter, [REDACTED] from 1986 until 1990 at her home in Newark, New Jersey. It is noted here that on her Form I-687 the applicant showed that she was employed by [REDACTED] as a babysitter from 1982 until 1986 and then that she was a vendor from 1988 until 2004 when she submitted her Form I-687. The applicant did not indicate that she was ever employed by [REDACTED] on her Form I-687. Therefore, doubt is cast on this affiant's assertion that she employed the applicant. Here, the affiant does not indicate whether there were periods of time from 1986 until the end of the requisite period when she did not see the applicant. As was previously noted, the affiant's claims of having employed the applicant is not consistent with the applicant's Form I-687. Because of this and because this affidavit is significantly lacking in detail, it can be afforded little weight in establishing that the applicant resided continuously in the United States from 1986 until the end of the requisite period.
- An affidavit from [REDACTED] dated September 23, 2005. Though he is not required to do so, [REDACTED] submits a photocopy of his birth certificate as proof that he was born in the United States. In this affidavit, [REDACTED] states that he has been doing business with the applicant since 1982. He states that he is her major supplier of beauty products. He states that the applicant did business with his late father in 1982. It is noted here that the applicant indicated that she was only employed as a babysitter until 1986 and that she did not begin working as a vendor until 1988 on her Form I-687. Though the affiant attests to the character of the applicant, he does not state that he personally knows that the applicant resided in the United States from a date before January 1, 1982 and then for the duration of the requisite period. Because this affidavit indicates that the applicant was employed selling products since 1982 when her Form I-687 indicates that she was employed as a babysitter,

the credibility of this affidavit is called into question. Because of its lack of detail, this affidavit carries only minimal weight as proof that the applicant resided in the United States since 1982. As this affiant does not claim to have met the applicant before January 1, 1982, it carries no weight in establishing that the applicant entered the United States before that time.

- A second document, an affidavit, from [REDACTED] that is notarized and is dated September 26, 2005. Though he was not required to do so, [REDACTED] submitted a photocopy of a University of Bridgeport Connecticut Identity Card with this affidavit. This document is dated December 2, 1980 and is proof that [REDACTED] was present in the United States on a date before January 1, 1982. He further submits a University of Bridgeport Dining Services card that is not dated and photocopy of his Connecticut Driver's License issued in 2003. [REDACTED] states that he has resided in the United States at [REDACTED] [REDACTED] in Bronx, New York for the past 31 years. It is noted here that this affiant's driver's license issued to him in 2003 indicates his address is [REDACTED] Bridgeport, CT. The affiant goes on to say that he has known the applicant since December 1981 when he met her at a reception in Manhattan. He states he has been friends with the applicant since that time. Here, though the affiant states he met the applicant in the United States, he does not indicate that he personally knows she ever resided in the United States. Because this affiant does not indicate that he knows that the applicant resided in the United States during the requisite period, this affidavit carries no weight in establishing that she did so.

The director issued a Notice of Decision on February 11, 2006. In her decision, she noted that on September 29, 2005 her office received a response to her NOID. However, she found this response was not sufficient to overcome her reasons for denial. She states that the affidavits submitted in support of the application do not appear credible or amenable to verification. In saying this she states that the affidavits submitted by the applicant do not include proof that the affiants were in the United States during the requisite period, proof that there was a relationship between the applicant and the affiants and a current phone number at which they can be reached to verify information in their affidavits. She goes on to state that [REDACTED] did not include proof that she was in the United States during the requisite period. She went on to note that [REDACTED] was not able to provide information regarding the applicant's place of residence, country of birth or other biographical information when her office contacted him. The director stated that the applicant did not meet her burden of proving by a preponderance of the evidence that she resided continuously in the United States for the duration of the requisite period.

On March 16, 2006 the applicant submitted a Form I-694 Notice of Appeal of Decision to CIS. In this first appeal, the applicant states that she is still in the process of gathering evidence in support of her application. She requests additional time to submit this additional evidence. She further submits a letter that is dated March 10, 2006. In this letter she provides a telephone number for [REDACTED]. She goes on to say that though the Service contacted affiant [REDACTED] he was distracted at the time he received the call, as he was walking down a

street in Manhattan with his children at the time he received the call. Therefore he could not concentrate and provided responses that appeared to contradict other evidence in the record.

On April 7, 2006, the applicant submitted a letter to the director. In this letter she explains that she is submitting identity documents for affiant [REDACTED] a photocopy of an identification card issued by the Newark Board of Education in 1981. She further submits a photocopy of the personal information page of [REDACTED]'s daughter's passport. She submits these documents as proof that [REDACTED] was in the United States during the requisite period. She further submits the following documents in support of her application:

- A photocopy of the personal information page of [REDACTED]'s daughter, Emmanuella Charles, proving that she was born in 1985.
- A photocopy of an identity card from Newark Evening High School. This card bears a photograph of [REDACTED] and is dated 1981.
- A **notarized affidavit from** [REDACTED] that is dated April 10, 2006. With this letter, Mr. [REDACTED] submits a photocopy of his Form 214, Report of Separation from Active Duty that shows that he began active duty with the United States armed forces in 1973 and then separated from the military in 1977. In his affidavit, [REDACTED] states that he is a United States Citizen who has known the applicant since 1982. He states that she was selling African products in New York when he met her. The affiant states he occasionally sells body oils to the applicant for her business. Here, though the affiant indicates that he met the applicant in 1982, he does not state how he can verify the year that he met her. He does not state that he knows that the applicant was residing in the United States when he met her or that she resided continuously in the United States for part or all of the requisite period. Therefore, this letter carries no weight as proof that she did so.

It is further noted that the applicant submitted envelopes as follows. It is not clear from the record when these documents were submitted. **However, details of these envelopes are as follows:**

- An envelope that is dated October 27, 1982 and was sent from Mali by [REDACTED] to the applicant at the address of residence in the United States that is consistent with what she showed she lived at in 1982 on her Form I-687.
- An envelope that is dated September 14, 1983 and was sent from Mali by [REDACTED]. This envelope was sent to the applicant at the address of residence in the United States that she showed she lived at in 1983 on her Form I-687.

These envelopes show that individuals mailed letters to the applicant at an address that is consistent with where the applicant shows she resided, on her Form I-687. However, they were both mailed

subsequently to January 1, 1982. Therefore, these envelopes do not offer proof that the applicant resided in the United States before January 1, 1982.

On June 2, 2006 the director issued a second Notice of Decision that considered the additional evidence submitted subsequently to the applicant filing her first Form I-694. In this decision, the director refers to her March 7, 2006 NOID and notes that on September 30, 2005 her office received additional evidence in support of the application. It is noted here that the AAO was not able to find a NOID dated March 7, 2006 in the record. However, she states that the additional evidence, when considered with documents and statements previously submitted by the applicant, were not sufficient to overcome the director's grounds for denial as stated in her NOID. In saying this, the director asserts that the affidavits submitted by the applicant did not appear credible nor amenable to verification. She notes that credible affidavits include documents identifying the affiant, proof that the affiant was in the United States during the statutory period and a telephone number at which the affiants can be reached to verify information in their affidavits. Here, the director goes on to say that her office interviewed Mr. [REDACTED]. However, she states that during that interview, that affiant was not able to provide an approximate date for when he met the applicant. He further failed to correctly identify the state the applicant resides in. The director went on to say that her office contacted [REDACTED] (referred to as [REDACTED] in her Notice of Decision) and that he refused to provide information to the officer when he was contacted. The director also stated that though her office attempted to call [REDACTED], those calls were unanswered.

On appeal, the applicant submits a statement dated June 23, 2006 in which she asserts that she submitted affidavits that attest to her presence in the United States during the requisite period. She goes on to say that she submitted affiants' identity documents, phone numbers at which they could be reached to verify information in their affidavits and proof that the affiants were in the United States during the requisite period. She responds to the director's allegations regarding contradictory statements made by the affiant [REDACTED] when he was contacted by the Service by saying that she previously provided an explanation for these inconsistencies in her letter dated March 10, 2006. She goes on to say that affiant [REDACTED] did not recall that the Service ever contacted him. She further states that affiant [REDACTED] has not been contacted by the Service.

Though the AAO finds that the affiants from whom the applicant submitted affidavits did submit documents as proof of their identity, as well as documents proving that they were in the United States prior to the requisite period, because the applicant's employment as shown on her Form I-687 is not consistent with information in affidavits submitted by either [REDACTED] or [REDACTED], doubt is still cast on the applicant's claimed employment during the requisite period. These inconsistencies, combined with the lack of detail in the affidavits submitted by the applicant causes the applicant to fail to meet her burden of establishing by a preponderance of the evidence that she resided continuously in the United States for the duration of the requisite period.

In summary, the applicant has not provided sufficient evidence of residence in the United States relating to the period from before January 1, 1982 until the end of the requisite period. The affidavits she submitted were significantly lacking in detail and assertions in them regarding her employment during that time were inconsistent for the reasons noted.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, as well as the inconsistencies and contradictions noted in the record, seriously detract from the credibility of his 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 inconsistencies in the record and the lack of credible supporting documentation, it is concluded that she 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