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U.S. Citizenship  
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OCT 02 2008

FILE:

MSC-05-307-11062

Office: NEW YORK

Date:

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.

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 April 26, 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 “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 submitted a Form I-694 Notice of Appeal of Decision Under Section 210 or 245A and two letters. On the Form I-694, the applicant states that she “entered the United States prior to January 1, 1982” and “resided continuously in an unlawful status since then.” As of this date, the AAO has not received any additional evidence from 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).

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 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 continuously resided in the United States for the requisite period.

The applicant has submitted several affidavits and letters; a copy of the applicant's passport; a copy of the applicant's New York identification card issued on August 21, 1995; and a copy of the applicant's employment authorization card issued on November 26, 2003. The applicant's

New York identification card, employment authorization card, and passport 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.

Some of the evidence submitted indicates that the applicant resided in the United States after May 4, 1988 and is not probative of residence before that date. The following applies to the requisite time period:

- Three identical form-letter affidavits from [REDACTED], and [REDACTED]. The affiants state that they have known the applicant in the United States and that they know that the applicant has lived "continuously and unlawfully in the United States from before January 1, 1982 until January 21, 1988 when the applicant [] visited a QDE to apply for the 1986 'amnesty' program." The affiants also state that the applicant told them "on or about February 19, 1991" that she had visited a QDE and was turned away. Although the affiants state that they have known the applicant since before January 1, 1982, the statements do not supply enough details to lend credibility to an at least 24-year relationship with the applicant. For instance, the affiants do not indicate how they date their initial meeting with the applicant, how frequently they had contact with the applicant, or how they had personal knowledge of the applicant's presence in the United States. Further, the affiants do not provide information regarding where the applicant lived during the requisite period. Given these deficiencies, these affidavits have minimal probative value in supporting the applicant's claims that she entered the United States prior to January 1, 1982 and resided in the United States for the entire requisite period.
- A letter from the Qualified Designated Entity [REDACTED], signed by [REDACTED] QDE Director and dated January 21, 1988. The letter states "upon consideration we cannot accept your application and fee because you are found ineligible for the benefits you are filing for." The reason given for returning the applicant's application was that the applicant did not reside continuously in the United States since January 1, 1982 because she traveled outside of the United States and "returned either without inspection, or without prior INS permission, or improperly using some type of travel documentation." Although this letter is evidence that the applicant was present in the United States on January 21, 1988 and attempted to file a Form I-687 on that day, this letter has minimal probative value in supporting the applicant's claims that she entered the United States before January 1, 1982 and resided in the United States for the entire requisite period.

The record of proceeding also contains a letter from the World Buddhist Association and a letter from the Tsung Sun Social Club, Inc. The regulation at 8 C.F.R. § 245a.2(d)(3)(v) provides that attestations to an applicant's residence by churches, unions, or other organizations may be made by letter which:

- (A) Identifies applicant by name;

- (B) Is signed by an official (whose title is shown);
- (C) Shows inclusive dates of membership;
- (D) States the address where applicant resided during membership period;
- (E) Includes the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery;
- (F) Establishes how the author knows the applicant; and
- (G) Establishes the origin of the information being attested to.

The letter from the World Buddhist Association was signed by [REDACTED] Deputy Abbot and dated March 3, 2007. Mr. [REDACTED] states that the applicant has “attended this temple and followed the teachings of Buddha since December 1981 through 1988.” Mr. [REDACTED] also states that the temple knows of the applicant “since her first entry into the United States prior to January 1, 1982, and we also know that she has resided in the United States in a continuous unlawful status.” The letter provided by Mr. [REDACTED] does not establish the applicant’s residence during the requisite period as it does not comply with the above cited regulation. The letter provided by Mr. [REDACTED] does not: state the address where the applicant resided during her membership period; establish in detail that the author knows the applicant and has personal knowledge of the applicant’s whereabouts during the requisite period; and does not establish the origin of the information being attested to. The letter does not reference temple membership records or otherwise specifically state the origin of the information being attested to. For this reason, the letter is not deemed probative and is of little evidentiary value.

The letter from the Tsung Sun Social Club, Inc. was signed by [REDACTED] Club Manager and dated March 2, 2007. Mr. [REDACTED] states that he certifies that the applicant has been a “club member since December 1981 until [the] present” and a “good member.” The letter also states that the longest time period that the applicant has not taken part in club activities is “about one month.” The letter provided by Mr. [REDACTED] does not establish the applicant’s residence during the requisite period as it does not comply with the above cited regulation. The letter provided by Mr. [REDACTED] does not: state the address where the applicant resided during her membership period; establish in detail that the author knows the applicant and has personal knowledge of the applicant’s whereabouts during the requisite period; and does not establish the origin of the information being attested to. The letter does not reference club membership records or otherwise specifically state the origin of the information being attested to. For this reason, the letter is not deemed probative and is of little evidentiary value.

The remaining evidence in the record is comprised of the applicant’s statements and application forms, in which she claims to have entered the United States in October 1981. The applicant has

not 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.

The director issued a notice of intent to deny (NOID) on March 9, 2006. The director denied the application for temporary residence on February 7, 2007. 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 states that she “entered the United States prior to January 1, 1982” and “resided continuously in an unlawful status since then.” As noted above, 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. Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that she is eligible for the benefit sought.

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.