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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

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FILE:

MSC-06-089-16270

Office: ATLANTA

Date:

**OCT 16 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.

  
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, Atlanta. 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 also determined that the applicant had not attempted to file a legalization application during the amnesty 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 asserts her eligibility for temporary resident status and states that she has submitted sufficient evidence to establish her continuous unlawful residence in the United States, and that she did attempt to file during the amnesty period.

Although the district director determined that the applicant had not established that she was eligible for class membership pursuant to the CSS/Newman Settlement Agreements, the district director treated the applicant as a class member by adjudicating the Form I-687 application. Consequently, the applicant has neither been prejudiced by nor suffered harm as a result of the district director's finding that the applicant had not established that she was eligible for class membership. Therefore, the AAO will adjudicate the applicant's appeal as it relates to her admissibility and her claim of continuous residence in the United States since prior to January 1, 1982.

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. See 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 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 December 28, 2005. The applicant also submitted the following attestations:

- Fill-in-the-blank affidavits from [REDACTED] and [REDACTED] in which they stated that they have known the applicant to be in the United States since November of 1981, that they have been in close contact with the applicant, and that they meet the applicant often at family functions. Here, the affiants fail to indicate under what circumstances they met the applicant, the applicant's place of residence, or any other detail that would lend credence to their claimed knowledge of the applicant and the applicant's presence in the United States during the requisite period. Because the affidavits are significantly lacking in detail, they can be afforded only minimal weight in establishing that the applicant resided in the United States during the requisite period as she claimed.
- An affidavit from [REDACTED] in which she stated that the applicant and one Jose [REDACTED] lived with her in Houston, Texas from September of 1981 to January of 1998. She further stated that the documents she had to substantiate her claim were lost during a storm in Houston, Texas. Although the affiant states that the applicant lived with her from September of 1981 to January of 1998, she fails to specify the address(es) where she resided during that period. It is also noted by the AAO that the applicant indicated on her Form I-697 application that she resided in numerous places during the period in question. Because the affidavit is significantly lacking in detail, it can be afforded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

In denying the application the director noted that the applicant had failed to submit evidence to support her claimed continuous unlawful residence in the United States. The director further noted that the applicant failed to present sufficient evidence during her immigration interview to substantiate her testimony concerning her entry into and departure from the United States.

On appeal, the applicant reasserts her claim of eligibility for temporary resident status. She does not submit any new evidence.

In the instant case, the applicant has failed to overcome the director's denial. The majority of affidavits submitted by the applicant were fill-in-the-blank type forms that were lacking in detail and insufficient to establish the applicant's eligibility for the immigration benefit sought. The affidavit submitted by [REDACTED] was insufficient in that she failed to specify the addresses where the applicant resided during the requisite period. In response to the Notice of Intent to Deny, the applicant asserted that she was unable to provide evidence to support her claimed continuous unlawful residence in the United States since before January 1, 1982 because all documents were lost during hurricane Ailcia which hit Harris County, Texas in August of 1983. Although the applicant asserts that all of her documents were lost during hurricane Alicia in 1983, she has failed to submit any independent documentary evidence to substantiate her claim. Therefore, it cannot be concluded that the applicant resided continuously in the United States for the requisite period.

The absence of sufficiently detailed 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 applicant's reliance upon documents that are lacking in detail, 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.