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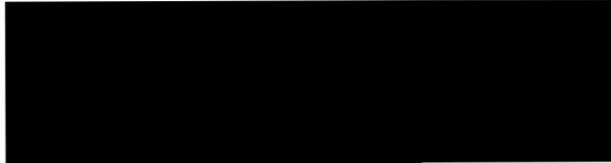
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
and Immigration
Services

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FILE: [Redacted]
MSC-06-007-13054

Office: LOS ANGELES

Date: **SEP 22 2008**

IN RE: Applicant: [Redacted]

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.

bert 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, Los Angeles. 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 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 that she was nervous during her interview and sometimes did not understand the officer's questions. The applicant states that she entered the United States before February 1982. The applicant states that she traveled to Mexico in December 1987 and returned in January 1988. The applicant states that she will look for additional evidence of her residence in the United States.

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 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 October 7, 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 showed her first address in the United States to be in Newhall, California from 1988 until 1990. The applicant failed to show any residential address(es) in the United States prior to 1988. The applicant’s failure to show her residence in the United States for the entire requisite period draws into question the credibility of her claim.

The applicant submitted the following documentation:

- An affidavit from [REDACTED] dated September 15, 2005, which provides that she has known the applicant since 1988. This affidavit fails to convey how [REDACTED] first met the applicant. Furthermore, it does not provide the month and year of the date they first became acquainted. This information is necessary to determine whether they became acquainted

during the requisite period.¹ Given these deficiencies, this affidavit is without any probative value as evidence of the applicant's residence in the United States during the requisite period.

The applicant furnished copies of numerous photographs. However, she failed to identify the persons featured in the photos and the location of where they were taken. There is no indication of whether these photos were taken in the United States or abroad. In addition, with the exception of one photo, there is no indication of the dates these photos were taken or developed. Given these deficiencies, these photos are without any probative value as evidence of the applicant's residence in the United States during the requisite period.

On April 14, 2006, the director issued a decision to deny the application. In denying the application, the director noted that the applicant testified to the following:

- She first entered the United States in February 1982;
- She returned to Mexico after a few months after her entry;
- She attended school in Mexico from 1983 until 1987; and
- She entered the United States in January 1988 to reside permanently.

The director determined that the applicant failed to meet her burden of proof by a preponderance of the evidence that she resided in the United States for the requisite period. The director concluded that the applicant is ineligible for temporary resident status.

On appeal, the applicant issued a statement that is largely unintelligible. The applicant asserts that she was nervous during her interview and sometimes did not understand the officer's questions. The applicant states that she entered the United States before February 1982. The applicant states that she traveled to Mexico in December 1987 and returned in January 1988. The applicant states that she will look for additional evidence of her residence in the United States.

The applicant's assertions on appeal do not overcome the basis for the director's denial. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Id.* The applicant has failed to submit such evidence in this case.

¹ 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). According to 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.

In summary, the applicant has failed to provide credible, reliable and probative evidence of her residence in the United States during the requisite period. The applicant has not provided sufficient evidence to establish that she entered the United States prior to January 1, 1982. Nor has she established that she has resided in the United States during the requisite period. The applicant has been given the opportunity to satisfy her burden of proof with a broad range of evidence. See 8 C.F.R. § 245a.2(d)(3). The applicant furnished as documentary evidence of her residence in the United States, an affidavit and photographs that are without any probative value. The affidavit states that the affiant, [REDACTED], first met the applicant in 1988. In viewing the photographs the applicant furnished, the only one that bears a date indicates that it was taken in 1988. Furthermore, the applicant's Form I-687 shows that she first resided in the United States in 1988. During the applicant's interview on April 12, 2006, she signed a sworn statement that provides, "I came the first time in December 1982 with my mom and we stay [sic] for a few months then we go back to Mexico and we come back on January 1988 to reside permanent [sic]." These admissions lead to a finding that the applicant has not continuously resided in the United States for the entire requisite period. Pursuant to *Matter of Ho, supra*, the applicant has failed to overcome this finding with independent and objective evidence.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire 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 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.