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U.S. Citizenship  
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[REDACTED]

LI

FILE: [REDACTED]  
MSC-05-306-20290

Office: NEW YORK

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:

[REDACTED]

**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. 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, counsel asserts that the director's decision was rendered against the weight of the evidence.

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 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 August 2, 2005. The applicant indicated at part #30 of her I-687 application that she resided at [REDACTED] York from December of 1981 to December of 1990. She submitted the following attestations along with her I-687 application:

- A fill-in-the-blank affidavit dated July 8, 2005 from [REDACTED] in which he stated that he had known the applicant in Nigeria and has also known her in the United States. He lists the applicant's address as [REDACTED] from December of 1981 to December of 1990. Here, the statement made by [REDACTED] is inconsistent with the statements made under oath by the applicant during her interview with immigration officials on March 6, 2006, where she stated that the affiant is her brother's friend and that she met him in 1983. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The applicant has failed

to submit any objective evidence to explain or justify the inconsistency. Because this affidavit is inconsistent with statements made by the applicant during her interview with immigration officials, it can be afforded little weight in establishing the applicant's residence in the United States during the requisite period.

- A fill-in-the-blank affidavit dated July 11, 2005 from [REDACTED] in which he stated that he knew the applicant in Nigeria as a family friend and has known her in the United States for over 20 years. He lists the applicant's address as [REDACTED] in New York from December of 1981 to December of 1990. Here, the statement made by [REDACTED] is inconsistent with the statements made under oath by the applicant during her interview with immigration officials on March 6, 2006, where she stated that the affiant is her brother's friend and that she met him in 1985. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. The applicant has failed to submit any objective evidence to explain or justify the inconsistency. Because this affidavit is inconsistent with statements made by the applicant during her interview with immigration officials, it can be afforded little weight in establishing the applicant's residence in the United States during the requisite period.

On November 17, 2005, the director issued a Notice of Intent to Deny (NOID), stating that the applicant has failed to provide evidence that she entered the United States prior to January 1, 1982 and had continuously resided in the United States during the requisite period. The director noted that the affidavits submitted were neither credible nor amenable to verification, and that there was nothing in the record to demonstrate that the affiants had direct personal knowledge of the events and circumstances surrounding the applicant's residence.

In response to the NOID, the applicant resubmitted the fill-in-the-blank affidavits from [REDACTED] [REDACTED]. The applicant also submitted an affidavit dated March 27, 2006 from [REDACTED] in which he stated that he has known the applicant in Nigeria since before 1980, and that he has known her to be in the United States since December of 1981. Again, this affidavit is inconsistent with the applicant's testimony under oath where she stated that the affiant is her brother's friend and that she has known him since 1983.

In denying the application the director noted that the applicant had failed to submit evidence to support her claimed entry into the United States. The director further noted that the applicant failed to present any evidence sufficient to overcome the grounds for denial.

On appeal, counsel asserts that the decision was rendered against the weight of the evidence and that the affidavits submitted in support of the applicant's claimed eligibility were not given due consideration. No additional evidence is submitted.

In the instant case, the applicant has failed to meet her burden of proof of her continuous unlawful residence in the United States since prior to January 1, 1982. She has failed to address the issues raised by the director in the NOID and in the denial.

Although the applicant claims to have resided initially with her aunt in the United States at a time when she was 15 years old, she has provided neither school records nor medical records to substantiate such claim. She also failed to provide any independent documentary evidence from or about any responsible adult or guardian to indicate the circumstances under which she survived in the United States during her childhood and throughout 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 inconsistent with statements she has made and that have little probative value, 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.