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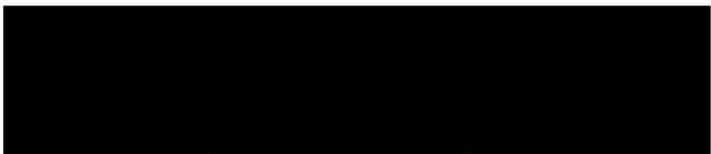
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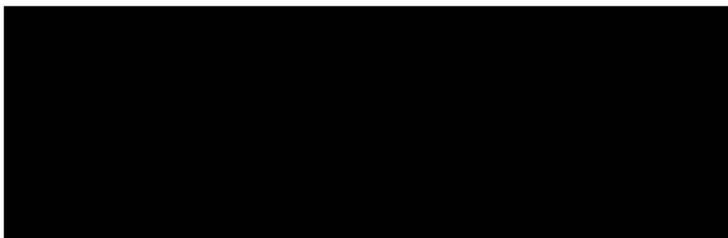
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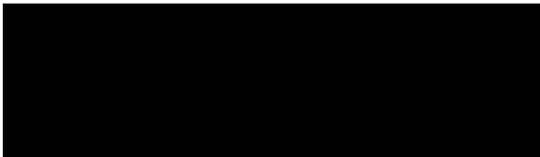
Applicant:



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 Director, Newark. 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 submitted any evidence in support of her application. The director stated that this caused the applicant to fail to establish 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. Therefore, the director determined the applicant was not eligible to adjust to temporary resident status pursuant to the CSS/Newman Settlement Agreements and denied the application.

It is noted that the director raised the issue of class membership in the decision. Since the application was considered on the merits, the director is found not to have denied the applicant's claim of class membership.

On appeal, counsel for the applicant asserts that the director erred in the denial of the application. Counsel states that the applicant submitted contemporaneous evidence and affidavits in support of her application.

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 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 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 that she maintained continuous unlawful residence in the United States during the requisite period and whether she has met that same burden in establishing that she is otherwise eligible to adjust to Temporary Resident Status. Here, the applicant has failed to meet this burden.

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 June 8, 2005. 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 failed to indicate her addresses of residence in the United States during the requisite period. At part #32 where the applicant was asked to list all of her absences from the United States, she indicated that she was absent once during the requisite period when she went to Ecuador to see her son who was sick from August 7 to August 30 in

1987. At part #33, where the applicant was asked to list all of her employment in the United States since she first entered, she did not indicate that she has ever been employed in the United States.

The record also contains a Form I-687 submitted by the applicant on October 14, 1990. At part #33 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant stated that her addresses of residence in the United States during the requisite period were: [REDACTED] from December 15, 1981 until February 1982; and [REDACTED] New Jersey from February 1982 until December 1988. At part #35 where the applicant was asked to list all of her absences from the United States, she indicated that she was absent once during the requisite period when she went to Colombia to see her son who was sick from August 7 to August 30 in 1987. At part #36, where the applicant was asked to list all of her employment in the United States since she first entered, she indicated that she was employed as follows during the requisite period: as a mason by One Stop Corporation from February 1982 until December 1986; and as a machine operator from April 1987 until July 1988.

The record contains a third Form I-687 signed by the applicant on February 5, 1991. The applicant listed her residences and her absences from the United States consistently with those she indicated on her October 14, 1990 Form I-687. However, at part #36, where the applicant was asked to list all of her employment in the United States since she first entered, she indicated that she was employed as follows during the requisite period: as a housekeeper for the Sheraton Hotel from January 1982 until September 1986; and as a machine operator for National Amusements from April 1987 until June 1988.

Also in the record are the notes from the CIS officer who interviewed the applicant. These notes indicate that the applicant stated that she first entered the United States on December 15, 1981 through the border at San Diego without inspection. The applicant indicated that she was absent from the United States when she went to Colombia in August of 1987 for 28 days. The applicant went on to state that he husband entered the United States before her.

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 his 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).

The applicant submitted the following evidence in the record that is relevant to her claim that she maintained continuous residence in the United States during the requisite period:

Affidavits pertaining to multiple years during the requisite period:

1. An affidavit from [REDACTED] who states that the applicant resided on [REDACTED] in Elizabeth, New Jersey from 1983 until 1988. She states that she is the superintendent of the building and that she saw the applicant on a regular basis.
2. A declaration from Reverend [REDACTED] that is dated August 21, 1990. The reverend states that the applicant is a member of his parish. He states that he has not known her for a long time, but people have told him that she had resided in the United States for at least five years.
3. An affidavit from [REDACTED] who submits a photocopy of his birth certificate, which indicates he was born in Puerto Rico. The affiant states that he has known the applicant since June 1982 and that they are friends. He speaks of her moral character.
4. An affidavit from [REDACTED] who states that the applicant resided with her from December 15, 1981 until January 31, 1982 at a residence on [REDACTED] in Perth Amboy, New Jersey. The affiant states that she and the applicant first met when they were neighbors in Colombia. She states that the applicant wrote to her in advance to ask if she could reside with her after her arrival in the United States.
5. An affidavit from [REDACTED] that was notarized on January 10, 2006. The affiant submits a photocopy of his Permanent Resident Card with his affidavit and states that he first entered the United States in 1980 and has remained since that time. He states that he is the applicant's brother-in-law. The affiant asserts that the applicant entered the United States in December 1981. He states that the applicant first resided in Perth Amboy, New Jersey and that they then resided together at [REDACTED] in Elizabeth, New Jersey from 1983 to about 1988.
6. An affidavit from [REDACTED] that was notarized on November 5, 1990. The affiant states that the applicant resided with him at [REDACTED] in Elizabeth, New Jersey from February 1982 until December 1988.
7. Receipts for payment of rent and other expenses for [REDACTED] from [REDACTED] or [REDACTED] the applicant's husband with dates ranging from November 1, 1982 to April 30, 1988.

8. An affidavit from [REDACTED] that was notarized on October 21, 2005. The affiant states that she has known the applicant since 1981. She states that the applicant and her husband resided with her from February 1982 for approximately two months.
9. An affidavit from [REDACTED] that was notarized on November 6, 2002. The affiant submits a photocopy of the identity page of her passport with her affidavit. The affiant states that she has known the applicant and her husband for 21 years. She states that she has socialized with them and that they have visited each other's homes and attended social events together.
10. An affidavit from [REDACTED] that was notarized on June 17, 1991. The affiant states that she has known the applicant since March 1982. She states that they are friends and speaks of her moral character.
11. An affidavit from [REDACTED] that was notarized on November 5, 2002. The affiant submitted a photocopy of the identity page of her United States passport with her affidavit. The affiant states that she has known the applicant for the past 20 years. She goes on to say that she has resided in the same building as the applicant for that time.
12. An affidavit from [REDACTED] that was notarized on January 5, 2006. The affiant state that they know the applicant and her husband and have known them for more than twenty years.
13. An affidavit from [REDACTED] that was notarized on June 17, 1991. The affiant states that he has known the applicant since November 13, 1983. He states that the applicant is his friend and he speaks of her moral character.
14. An affidavit from [REDACTED] that was notarized on November 9, 2002. [REDACTED] submitted a photocopy of his Certificate of Naturalization that indicates that he became a United States Citizen in 1978. The affiants state that they known the applicant and her husband and that they have known them for more than 20 years. The affiants state that they have had dinner and socialized with each other during that time.
15. An affidavit from [REDACTED] who submits a photocopy of his birth certificate, which indicates that he was born in the United States. The affiant states that he has known the applicant for about 18 years and states that they are next door neighbors.
16. An affidavit from [REDACTED] who submits a photocopy of her birth certificate and states that she has known the applicant for 16 years. Though the affiant states that she has known the applicant for part of the requisite period, she does not state that she knows that the applicant resided in the United States for part or all of the time she has known her.

17. An affidavit from the applicant that was notarized on January 17, 1992. The applicant states that she left Cali, Colombia on December 12, 1981 and flew to Mexico City. She states she spent one night in Mexico City and then traveled by plane to Tijuana. She states that she then boarded a bus to Los Cerros, Mexico, which is on the border with San Diego. She states that she traveled across the border on foot with a group of people to a car that took her to Los Angeles. She states that she was placed into the trunk of a car. She states that she then spent about nine days in Los Angeles while she was waiting for money from her husband. She states that upon her return to the United States after her absence in August 1987 she entered the same way.
18. A declaration from the applicant that is dated January 23, 1992. The applicant states that from 1982 until 1986 she worked cleaning houses for a woman named Carmen Rocha in New Jersey. It is noted that the applicant indicated on her Form I-687 submitted in 1990 that she was employed as a mason by One Stop Corporation from February 1982 until December 1986. It is further noted that the applicant also indicated on her 1991 Form I-687 that she worked as a housekeeper for the Sheraton Hotel from January 1982 until September 1986.

The applicant also submitted contemporaneous evidence in support of her application including envelopes that indicate they were either sent to or from her in New Jersey for all years of the requisite period, and evidence that during the requisite period she: sent funds to individuals from the United States; paid telephone bills in the United States; had prescriptions written for her; paid taxes; purchased cashier checks in the United States; and was employed and insured in the United States. The applicant also submitted evidence in support of her claimed absence from August 7 to August 30 in 1987.

It is also noted that the applicant has also submitted evidence as proof of her residence subsequent to the requisite period. As the matter at hand is whether she has submitted sufficient document to satisfy her burden of proving that she resided in the United States for the duration of the requisite period, documents that do not pertain to the requisite period are not relevant to this proceeding and are, therefore, not discussed here.

The director denied the application for temporary residence on May 10, 2006. In denying the application, the director stated that the applicant did not submit documentation in support of her application, and that she further failed to submit evidence that she maintained continuous physical presence or continuous residence during the requisite period. The director noted that though the applicant stated that her husband attempted to file for legalization during the original filing period, she did not submit evidence of this attempt or of her own absence during the requisite period. The director concluded by stating that the applicant failed to satisfy her burden of proof.

On appeal, counsel for the applicant asserts that the director erred in his decision, as the applicant submitted documentation in support of her application, including contemporaneous evidence and affidavits.

As noted above, the record reflects that the applicant did submit evidence in support of her application, including original contemporaneous documents, photocopies of contemporaneous documents, declarations and affidavits. Though it is not clear from the record which documents were submitted with the applicant's 2005 Form I-687 and which were submitted prior to that submission, the documents are part of the applicant's record with CIS. Therefore, the AAO finds that the director's statement that the applicant failed to submit any evidence in support of her application was in error. The director's error is harmless because the AAO conducts a *de novo* review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(d)(6). The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The AAO withdraws the director's statement that the applicant failed to submit evidence in support of her claim that she maintained continuous residence in the United States. The AAO finds that the applicant has submitted significant evidence that is relevant to her claimed residence in the United States during the requisite period.

However, upon *de novo* review of the matter, the AAO noted that the applicant's fingerprints reveal that she has been arrested and convicted on four occasions.

The statutory language at section 245A(b)(1)(C) of the Immigration and Nationality Act (Act) provides that the applicant for adjustment to temporary resident status "*must establish* that he is or she (i) is admissible . . . and (ii) *has not been convicted* of any felony or 3 or more misdemeanors."

The regulation at 8 C.F.R. 245a.2(c)(1) further states that applicants 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. Part 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).

Because there were no court dispositions in the record, the AAO submitted a request for additional evidence to the applicant on June 10, 2008. The AAO granted the applicant 60 days within which to submit court dispositions regarding these convictions. On July 8, 2008 the AAO received the requested court dispositions and an affidavit from the applicant dated June 25, 2008. In the affidavit, the applicant states that she acknowledges that she has been arrested of shoplifting on four occasions and states that these arrests resulted in disorderly persons convictions in the State of New Jersey. She goes on to say that she believes that this behavior began because she was pregnant and separated from her husband at the time of her first arrest and she was also influenced by a female friend. She states that after she and her husband reunited in the summer of 1993, she ceased her shoplifting behavior.

The court dispositions reveal that the applicant has been arrested and convicted on four occasions for violations of the New Jersey Criminal Code 2C § 20-11B(1) *Shoplifting*, categorized as a "disorderly persons offense" in the State of New Jersey, which is the equivalent of a misdemeanor. The court dispositions state the following:

- The applicant's first arrest occurred on or about September 6, 1991 when the applicant, using the name [REDACTED] was arrested and charged with a violation of New Jersey Criminal Code 2C § 20-11B(1) *Shoplifting*, a misdemeanor. The applicant was convicted of this offense on or about October 15, 1991 and was fined and sentenced to serve one day in detention. (Case Number [REDACTED])
- The applicant, using the name [REDACTED], was arrested for a second time on or about February 17, 1992 and charged with a violation of the New Jersey Criminal Code 2C § 20-11B(1) *Shoplifting*, a misdemeanor. On or about May 12, 1992 the applicant was found guilty of this offense and required to pay a fine. (Case Number [REDACTED])
- The applicant, using the name [REDACTED] was arrested for a third time on or about March 8, 1992 and charged with a violation of the New Jersey Criminal Code 2C § 20-11B(1) *Shoplifting*, a misdemeanor. On or about March 24, 1992 the applicant was found guilty of this offense and was ordered to pay a fine. (Case Number [REDACTED])

The applicant, whose name is listed as [REDACTED] was arrested for the fourth time on or about April 16, 1993 for a violation of the New Jersey Criminal Code 2C § 20-11B(1) *Shoplifting*, a misdemeanor. On or about May 24, 1993 the

applicant was convicted of this violation and was sentenced to pay a fine and to serve 30 days detention, 29 of which were suspended. (Case Number [REDACTED])

Though the director erred in her determination that the applicant failed to submit evidence in support of her claim to have resided in the United States for the requisite period, the applicant's criminal record causes the applicant to be ineligible to adjust to temporary resident status pursuant to the Act § 245A(b)(1)(C) and 8 C.F.R. 245a.2(c)(1).

In summary, though the director erred when she stated that the applicant did not submit evidence in support of her claim that she maintained continuous residence in the United States during the requisite period, the applicant has not satisfied her burden of proving that she is eligible to adjust status to that of a temporary resident. Though the applicant states that the crimes that she was convicted of occurred from 1991 to 1993 and were the result of a pattern of behavior that began during her separation from her husband, she remains convicted of these crimes. The applicant has been convicted of four misdemeanors. She 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.