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U.S. Citizenship
and Immigration
Services

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FILE:

MSC-05-190-10442

Office: NEW YORK

Date:

FEB 11 2009

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.

John F. Grissom, Acting 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, 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, the applicant asserts her claim of eligibility for temporary resident status and submits as evidence attestations on her behalf.

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 United States Citizenship and Immigration Services (USCIS).

The applicant submitted the following attestations:

- A letter dated July 15, 2005 from [REDACTED] of the American Society of Buddhist Studies in which she stated that the applicant has been following the teachings of Buddha since December 1981 and that the longest period of time she has been known not to congregate was about ten weeks.
- A letter dated April 6, 2007 from [REDACTED] of the American Society of Buddhist Studies in which it is stated that the applicant has been a member of the society from December 1981 to 1988, and to the present. The declarant also stated that the applicant participates in all charity activities sponsored by the society, and that she is a generous contributor to the charity fund. The declarant stated that the society knows that the applicant

entered the United States prior to January 1, 1982, and has been continuously present in the country, except for brief absences, until the date she was turned away by the INS.

- A letter from [REDACTED] of the [REDACTED] in which he stated that the applicant has been a club member since November 1981 and that the longest period of time she has been known to be absent was about two months. The declarant also stated that the social club has employed the applicant since December 2002.
- A letter from [REDACTED] president of the [REDACTED], in which he stated that the applicant has been a member of the organization since December 1981. The declarant stated that the club knows that the applicant entered the United States prior to January 1, 1982, and has been continuously present in the country, except for brief absences, until the date she was turned away by the INS.

The declarants' statements from the American Society of Buddhist Studies and the Flushing Central Lions Club are inconsistent with the applicant's statement on her Form I-687 application, at part #31 where she was asked to list all associations or affiliations with clubs, religious organizations, churches, unions, or businesses, and she failed to list them. This inconsistency calls into question the credibility of the affiant's statement. 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). In addition, none of the declarations conform to regulatory standards for attestations by organizations or churches at 8 C.F.R. § 245a.2(d)(3)(v). Specifically, the declarants do not state the address where the applicant resided during the alleged membership period, nor do they establish the origin of the information being attested to. The organizations have failed to provide documentary evidence such as enrollment records, certificates of attendance, or dues statements to substantiate the applicant's claimed membership. Because the declarations do not conform to regulatory standards, and because they are inconsistent with statements made by the applicant, they can be accorded little weight in establishing that the applicant resided in the United States since before January 1, 1982, and throughout the requisite period.

The applicant submitted receipts from China Trust Bank of New York and the Bank of China bearing her name and dated March and April of 1982. While the receipts are some evidence of the applicant's presence in the United States in March and April of 1982, they are insufficient to demonstrate her continuous residence in the United States since prior to January 1, 1982, and throughout the requisite period.

In the instant case, the applicant has failed to provide sufficient credible and probative evidence to establish her continuous unlawful residence in the United States since prior to January 1, 1982, and throughout the requisite period. She has failed to overcome the director's basis for

denial. The attestations submitted are inconsistent with the applicant's sworn and fail to conform to regulatory standards, and are therefore insufficient to support the applicant's claimed eligibility for the immigration benefit sought.

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 evidence that is inconsistent with her statements and that fail to conform to regulatory standards, 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.