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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: NEW YORK Date: FEB 1 2 2009

MSC-06-089-16545

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.

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 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 denied the application, finding 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.

On appeal, the applicant asserts that she has established her unlawful residence for the requisite time period.

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 periods, 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). To meet his or her burden of proof, an applicant must provide evidence of

eligibility apart from the applicant's own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

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.* 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. *See* 8 C.F.R. § 245a.2(d)(6). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

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 or petitioner has satisfied the standard of proof. See *U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (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.

The issue in this proceeding is whether the applicant (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. The documentation that the applicant submits in support of her claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of affidavits and letters of relationship written by friends (hereinafter referred to as "statements"), an employment verification letter, a copy of the applicant's passport, a copy of the applicant's Form I-94, Departure Record, and a letter from the U.S. Department of Labor. The AAO has reviewed each document in its entirety to determine the applicant's eligibility; however, the AAO will not quote each witness statement in this decision.

The record contains witness statements of relationship from [redacted] and [redacted] Although the witnesses state that they have known the applicant during the requisite period, their statements do not supply enough details to lend credibility to their relationship with the applicant. For instance, the statements do not indicate how they date their initial meeting with the applicant, how frequently they had contact with the applicant, or

how they had personal knowledge of the applicant's presence in the United States. Moreover, none of the statements provide the location of where the witnesses first met the applicant. It is, therefore, unclear whether they first met the applicant in the United States or abroad. Finally, the statements do not provide any information regarding where the applicant lived during the requisite period. Given these deficiencies, these statements are without any probative value in supporting the applicant's claims that she resided in the United States for the requisite period.

The record also contains a witness statement from . This statement provides that has been a personal friend of the applicant's since 1984. It indicates that she first met the applicant at a church bazaar through a mutual friend in Pennsylvania. Although this statement provides the location of where first met the applicant, it does not provide any other information on the applicant's residence in the United States during the requisite period. There is no information on how frequently had contact with the applicant, whether she has direct personal knowledge of the applicant's residence in the United States, or where the applicant lived. To be considered probative and credible, a witness statment must do more than simply state that a witness knows an applicant and that the applicant has lived in the United States for a specific time period. The content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Given these deficiencies, this statement of is little probative value in supporting the applicant's claims that she resided in the United States for requisite period.

The record shows an employment verification letter from This letter provides that has known the applicant since 1985. The letter explains that met the applicant when she was living in New Jersey through an acquaintance. It states that the applicant frequently took charge of s teenage children when she went on vacation with her husband. The regulation at 8 C.F.R. § 245a.2(d)(3)(i) provides that letters from employers must include: (A) Alien's address at the time of employment; (B) Exact period employment; (C) Periods of layoff; (D) Duties with the company; and (E) Whether or not the information was taken from official company records.

This letter fails to comply with the above cited regulation because it does not provide the applicant's address at the time of employment, her periods of employment with the family, the duties that were involving in looking after s teenage children, and whether r keep any records of the applicant's employment. Furthermore, the letter, dated December 13, 2005, fails to explain how r was able to date the applicant's employment. It is unclear whether she relied on her own recollection, the applicant's recollection, or any documentation she may have kept. Moreover, the letter does not list the location where the applicant was employed to verify that she was employed in the United States. Finally, the applicant failed to list r as her employer on the employment history section of her Form I-687. Given these deficiencies, this letter is without any probative value in supporting the applicant's claims that she resided in the United States for requisite period.

The remaining evidence in the record is comprised of copies of the applicant's prior passport, Form I-94, Departure Record, and a letter from the U.S. Department of Labor. The visa page of the applicant's passport shows that she was issued a B1/B2 visa at the Port of Spain, Trinidad on April 3, 1987. The passport bears an entry stamp showing that the applicant used this visa for admission to the United States on April 28, 1987. Similarly, the Form I-94 indicates that the applicant was admitted into the United States at New York, New York on April 28, 1987 as a B-2 visitor. Finally, the U.S. Department of Labor letter shows that an application for alien employment certification filed on behalf of the applicant was accepted for processing on November 18, 1987. These documents are probative evidence of the applicant's entry into the United States on April 28, 1987. However, they, alone, do not demonstrate that she entered before January 1, 1982 and resided in the United States for the entire requisite period.

Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that she is eligible for the benefit sought.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that she entered the United States before January 1, 1982 and 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.