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**U.S. Citizenship  
and Immigration  
Services**

21

FILE:

MSC-06-074-11883

Office: NEW YORK

Date:

FEB 26 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:

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. Grisson, 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 noted that although the applicant submitted a school certificate and a doctor's note in response to the Notice of Intent to Deny (NOID), it was insufficient to establish her residence during the requisite period. The director also noted that the applicant submitted several affidavits but that the affiants failed to demonstrate their direct personal knowledge of the events and circumstances surrounding the applicant's residency. The director further noted that the letter from Katica Sepcick was not amenable to verification. 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. She states that she has submitted affidavits and other evidence sufficient to demonstrate her continuous unlawful residence in the United States throughout the requisite period. She also states that her school records and immunization records have been submitted as requested and that she is supplying contact information for the affidavits previously provided. The applicant resubmits copies of her certificate of achievement, doctor's note, and attestations on appeal.

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) on December 13, 2005.

The applicant submitted the following evidence:

- A handwritten memo from [REDACTED] in which he stated that the applicant was seen at his office on October 21, 1980, April 7, 1982, and July 17, 1984. The doctor attached to the memo untranslated handwritten statements. 8 C.F.R. § 103.2(b)(3). The regulations require that any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. 8 C.F.R. § 103.2(b)(3). Because the applicant failed to submit certified translations of the document, the AAO cannot determine whether the evidence supports the applicant's claim.
- A copy of a Certificate of Achievement from [REDACTED] in which it is stated that the applicant had successfully completed her Quraan and Arabic Program at [REDACTED] School on May 8, 1983. Here, there is no evidence in the record to demonstrate the specific dates of the applicant's attendance at the school, the school's curricula, or the school's contact information.

The applicant submitted the following attestations:

- An undated letter from [REDACTED] in which she stated that she has known the applicant since 1982; an undated letter and an affidavit dated December 8, 2005 in which [REDACTED] stated that she has known the applicant since 1980 and that the applicant lived with her and her family at [REDACTED] in Astoria, New York from 1980 to 1989; a fill-in-the-blank affidavit dated April 24, 2006 from [REDACTED] in which she stated that she has known the applicant since 1980 and that she met the applicant in [REDACTED]s when she visited with friends, and that the applicant has run errands for her. The affiant also stated that she lived at [REDACTED] in Astoria, New York between January of 1982 and May of 1988.
- An undated letter from [REDACTED] in which she stated that she has known the applicant since 1986 and that the applicant is a kind and caring person; an undated letter and a fill-in-the-blank affidavit dated April 26, 2006 from [REDACTED] in which she stated that she has known the applicant since 1980 and that she met the applicant in June of 1980 at the C-Town Supermarket. The affiant stated that she lived at [REDACTED] in Astoria, New York between January of 1982 and May of 1988. She also stated that the applicant is a pleasant person, that she is a wonderful mother, and that the applicant has a lovely apartment.
- An undated letter from [REDACTED] in which she stated that she has known the applicant since 1982 and that the applicant is a kind and caring person.

The affiants contradict their own statements and each others' statements. [REDACTED] initially stated that she met the applicant in 1982 and subsequently stated that she met the applicant in 1980. [REDACTED] also fails to specify any family relations that the applicant had in 1980 or

how the applicant, at the age of 13, was able to financially sustain herself.<sup>1</sup> [REDACTED] statement is inconsistent with the applicant's where she stated under oath, during her immigration interview, that she entered the United States at age 13 with her father and that she lived with her father at [REDACTED] in Astoria, New York. [REDACTED] initially stated that she had known the applicant since 1986, and subsequently stated that she met the applicant in June of 1980. Although [REDACTED] stated that she resided at [REDACTED] in Astoria, New York between January 1982 and May 1988, she failed to indicate that the applicant resided in her home as was stated by [REDACTED]. It is also noted that the attestations are boiler plate and fill-in-the-blank statements and do not demonstrate independent knowledge of the applicant's whereabouts or circumstances of her residency throughout the requisite period. [REDACTED] fails to specify the circumstances under which she met the applicant or the frequency with which she saw and communicated with the applicant during the requisite period.

The applicant has failed to provide an explanation for the inconsistencies found in the record of proceeding relating to his residency and employment in the United States. 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 (BIA 1988).

The applicant submitted a letter from [REDACTED] in which he stated that the applicant was employed by [REDACTED] as a kitchen helper from 1983 to 1986; and that from 1987 to 1989 the applicant was employed as a full-time waitress. This statement is inconsistent with the applicant's Form I-687 application at part #33 where she stated that she was self-employed in sales from October 1980 to May 1989. In addition, the declaration does not conform to regulatory standards for attestations by employers. Specifically, the declarant does not specify the address(es) where the applicant resided throughout the claimed employment period, or whether the employment information was taken from company records. Neither has the availability of the records for inspection been clarified. 8 C.F.R. § 245a.2(d)(3)(i).

In denying the application the director noted that the applicant failed to submit school and immunization records sufficient to establish her presence in the United States during the requisite period.

On appeal, the applicant reasserts her claim of eligibility for temporary resident status.

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

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<sup>1</sup> It is noted that the applicant testified under oath during her immigration interview on April 26, 2006 that she entered the United States with her father in 1980.

**denial.** Although the applicant claims that she has submitted her school records and immunization records as requested, the doctor's note is not translated and it does not appear to be an official immunization record, the documents are not certified, and the dates mentioned in the records are too sparse to establish the applicant's continuous unlawful residence in the United States. The attestations submitted are contradictory and are inconsistent with statements made by the applicant under oath, and they are lacking in detail. The applicant has also failed to provide any non-contradictory evidence from or about any responsible adult or guardian sufficient to indicate the circumstances under which she lived 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 and the inconsistencies noted above seriously detract 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 contradiction in statements made by the declarants and the applicant and the multiple inconsistencies contained in the record, it is concluded that the applicant 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.