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U.S. Citizenship
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Services

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FILE: [REDACTED]
MSC-05-348-10429

Office: NEW YORK

Date: **JAN 06 2009**

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:



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. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed or rejected, 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.

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 (together comprising the I-687 Application). The director denied the application and concluded that the applicant had failed to meet her burden of proof by a preponderance of the evidence that she entered the United States before January 1, 1982 and has resided continuously in the United States in an unlawful status throughout the requisite period. Specifically, the director noted the evidence submitted was insufficient and not credible to support her claim of continuous residence in the United States throughout the requisite period. Furthermore, the director observed the applicant spoke through an interpreter during interview with a U.S. Citizenship and Immigration Services (USCIS) officer, and based upon this observation, the director found it difficult to believe that someone who has been in the United States for 25 years could not communicate in English.

On appeal, counsel for the applicant asserts the applicant has provided sufficient credible evidence to support her claim of eligibility for the benefit sought and further claims that the director should not deny the application based upon the fact that the interview was conducted in Cantonese language. Counsel states in her brief that the applicant, as a matter of fact, speaks and understands English; however, she was not given the opportunity to testify in English because an interpreter had been arranged prior to the interview and no question was asked whether she would like to testify in English or other language. Additionally, counsel states in her brief that the applicant cannot provide additional evidence due to her undocumented status.

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)(1) 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 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, "[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.

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 (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 here is whether the applicant has met her burden by a preponderance of the evidence to establish that she entered the United States before January 1, 1982 and has continuously resided in the United States in an unlawful status throughout the entire requisite period.

In her testimony and personal declaration, the applicant asserts she first entered the United States in May 1981 and has resided in the United States since then. Along with the application, the applicant submitted three affidavits and a bank statement.

[REDACTED], the applicant's sister, who lives in Malaysia, wrote an affidavit in which she asserts that her sister, the applicant, has been residing and working in the United States since

May 21, 1981. Other than that statement, however, [REDACTED] did not provide other detailed information about her sister's residence and work in the United States, nor did she submit any corroborating document to support her assertion. Given the paucity of relevant detail in her affidavit and the absence of corroborating document, [REDACTED] affidavit cannot be used as evidence of the applicant's residence in the United States since 1981.

In her affidavit, [REDACTED] claims she is a good friend of the applicant and used to work together with the applicant in 1988. [REDACTED]'s statement, however, is not persuasive to be considered probative and credible. To be probative and credible, witness affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived and worked in the United States for a specific time period. Their content must include specific detail to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Because [REDACTED] affidavit lacks the relevant detail, her affidavit can only be accorded minimal probative value.

Finally, the affidavit from [REDACTED] and the bank statement postdate the requisite period, and thus are irrelevant and will not be considered.

On appeal, counsel claims the application should not be denied because the director found it difficult to believe that someone who has been in the United States for 25 years could not communicate in English. Upon a *de novo* review, the AAO finds that it is possible for someone not to be able to speak and understand English even after he or she has been residing in the United States for 25 years, and therefore, the director's opinion regarding this matter is irrelevant and will be withdrawn.

Regarding the applicant's inability to produce additional evidence, the Board of Immigration Appeals (BIA) has held in the *Matter of E- M--* that it is reasonable to expect an applicant who has been residing in this country since before January 1, 1982 to provide some documentation including affidavits and other relevant contemporaneous documents to establish eligibility. *Supra* at 82-83. Furthermore, as stated above, the burden is upon the applicant to prove by a preponderance of the evidence that she is eligible for the benefit sought. Hence, the fact that the applicant is undocumented or has not been in a lawful status since 1981 does not lighten or excuse the applicant's burden to prove that she qualifies for temporary resident status.

The absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period and lack of detail noted in the record, seriously detract from the credibility of her 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 lack of credible supporting documentation, it is concluded that the applicant has failed to establish by a preponderance of the evidence that she has 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.