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U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED]  
MSC-06-038-10555

Office: SAN DIEGO

Date: JAN 28 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: 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 Director, San Diego. 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 states that she has resided in the United States since 1981 and that she worked as a housekeeper and babysitter from 1981 to 1989. She also stated that the evidence she submitted is sufficient to support her claim of eligibility for the immigration benefit sought. She does not submit any new evidence 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 November 7, 2005.

The applicant submitted the following attestations:

- An affidavit from [REDACTED] in which she stated that she has known the applicant and her mother since 1985.
- A letter from [REDACTED] in which the representative stated that the applicant was a patient at the [REDACTED] Health Clinic in 1981.
- An affidavit from [REDACTED] in which he stated that he has known the applicant and her mother since 1981.

- Affidavits from [REDACTED] and [REDACTED] in which they stated that the applicant is their sister and that they are aware of the applicant being in the United States between 1982 and 1988 because their mother told them that that is where they were going and because they would keep in contact with the applicant while she was in the United States.
- An affidavit from [REDACTED] in which she stated that she has known the applicant since 1988 and that they first met at church.
- An affidavit from [REDACTED] in which she stated that she has known the applicant since December of 1980, that she met the applicant in Mexico, that the applicant is her brother's girlfriend, and that her brother told her that the applicant was going to the United States.
- An affidavit from [REDACTED] in which she stated that she first met the applicant in Mexico in 1980 and that she is aware of the applicant being in the United States between 1982 and 1988 because she would keep in contact with the applicant and her mother.
- An affidavit from [REDACTED] in which she stated that she first met the applicant in Mexico in 1981 and that she is aware of the applicant being in the United States between 1982 and 1988 because she would keep in contact with the applicant and her mother.
- An affidavit from [REDACTED] in which she stated that she first met the applicant in Mexico in 1980 through her children, and that she is aware of the applicant being in the United States between 1982 and 1988 because her children would keep in contact with the applicant.
- An affidavit from [REDACTED] in which he stated that he has known the applicant in the United States since 1988 and that he was introduced to her by his daughter-in-law.
- An affidavit from [REDACTED] in which he stated that he has known the applicant since 2001 and that he has been told by people who know the applicant that she has been in the United States since 1981.

The affiants fail to specify the applicant's place of residence during the requisite period. They also fail to provide any detail relating to the circumstances of the applicant's claimed entry into or residence in the United States since before January 1, 1982. The affiants fail to specify the frequency with which they saw and communicated with the applicant sufficient to demonstrate their awareness of her whereabouts and the circumstances of her residency during the requisite period. Therefore, the affidavits can be accorded only minimal weight in establishing that the applicant resided in the United States for the duration of the requisite period.

In denying the application the director noted that the evidence submitted lacked credibility sufficient to establish the applicant's eligibility for the immigration benefit sought.

On appeal, the applicant reasserts her claim of eligibility for temporary resident status. The applicant does not submit any new evidence.

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 lacking in detail sufficient to support the applicant's claimed eligibility.

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 lacking in detail, 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.