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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, D.C. 20529-2090



U.S. Citizenship
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Services

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FILE: [Redacted]
MSC 06 075 14859

Office: NEW YORK

Date: **NOV 02 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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

Perry Rhew
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, New York, and 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 disputes the director's findings.

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)(1).

For purposes of establishing residence and presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the alien attempted to file a completed Form I-687 application and fee or was caused not to timely file, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. Paragraph 11, page 6 of the CSS Settlement Agreement and paragraph 11, page 10 of the Newman Settlement Agreement.

An alien applying for adjustment of status 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. *See* 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 including affidavits 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.* 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 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.

At the time the applicant filed her Form I-687 application, she provided a copy of her Form I-94, Arrival-Departure Record, reflecting she entered the United States as B-2 non-immigrant visitor on December 15, 1984, and was granted a six-month period of authorized stay. The applicant received an extension of stay valid through December 14, 1985. The applicant provided no documentation to establish continuous residence and physical presence in the United States during the requisite period. In response to a Notice of Intent to Deny dated January 11, 2006, the applicant, in an attempt to establish continuous unlawful residence since prior to January 1, 1982 through the date she attempted to file her application, submitted:

- An affidavit from [REDACTED] who indicated that [s]he has known the applicant since 1981 through the Association of New York Buddhist Temple in New York. The affiant indicated that [s]he and the applicant have remained friends since that time.
- Affidavits from [REDACTED] and [REDACTED] who indicated that they have been acquainted with the applicant since 1981 and have remained good friends with the applicant since that time. The affiants also attested to the applicant’s residences in Jamaica, New York from April 1981 to March 1983; Glendale, Maryland from April 1983 to August 1984; Reston, Virginia from September 1984 to March 1985; and Richmond Hill, New York from March 1985 to May 1988.

On June 6, 2006, the director issued a Notice of Intent to Deny, which advised the applicant that the affidavits submitted appeared to be neither credible nor amenable to verification and that no

evidence was submitted demonstrating that the affiants had direct personal knowledge of the events testified to in their respective affidavits.

The applicant, in response, asserted that at the time of her initial interview she presented other supporting documents; however, the interviewing officer refused to accept some of her original documents. The applicant indicated that if she was given an opportunity for a fair interview she would bring “original tax returns file from 1989 till 2005, original photo taken in 1981 and any other documents I will find to prove my continuous residency since 1981.” The applicant submitted:

- An additional copy of her Form I-94 with authorized extension.
- A notice dated September 30, 1985 from the legacy Immigration and Naturalization Service (INS) regarding the filing of a photocopied Form I-539, Application to Extend/Change Nonimmigrant Status, along with an original Form I-94.
- A document dated November 11, 1984, from Paris, France written in the French language regarding a flight on December 15, 1984, from Paris to New York.
- An additional affidavit from [REDACTED] who amended her statement to include that in 1981 while visiting her mother in West Palm Beach, Florida she met the applicant. The affiant indicated that the applicant “was working for my mother as a live in Home Health Aid.” The affiant indicated that she met the applicant again in December 1981 in Jamaica, New York. The applicant indicated that she was able to give the applicant “some jobs as I am a designer.” The affiant indicated that the applicant still works for her privately as a seamstress. The affiant attested to the applicant’s absence from the United States from October 1984 to December 1984. The affiant indicated that the applicant went to Sri Lanka in December 1984 and brought her son to the United States. The affiant indicated that she is giving the applicant some photographs “which were taken together in the past.” The affiant reaffirmed the applicant’s residences in Jamaica, New York; Glendale, Maryland; Reston, Virginia; and Richmond Hill, New York during the requisite period.
- An additional affidavit from [REDACTED] who indicated that she met the applicant at a birthday party in December 1981 and has remained close friends with the applicant since that time. The affiant attested to the applicant’s absence from the United States from October 1984 to December 1984 and that upon the applicant’s return brought her ten-year old son back with her. The affiant reaffirmed the applicant’s residences in Jamaica, New York; Glendale, Maryland; Reston, Virginia; and Richmond Hill, New York during the requisite period.

At the time of her second interview on November 27, 2007,¹ the applicant provided photocopies of a bank book from The Manhattan Savings Banks reflecting deposits and withdrawals since August 27, 1985, several photographs the applicant claimed were taken during the requisite period; a deed entered into on September 27, 1994;² and documentation from the Internal Revenue Service regarding the applicant's 2003 and 2005 taxes;

The record contains a Form I-94, reflecting the applicant's son, who was born on January 24, 1982, entered the United States as a B-2 nonimmigrant visitor on March 8, 1985, and was granted a six-month period of authorized stay.

The director, in denying the application, noted that the documents submitted did not establish the applicant's entry prior to January 1, 1982; the photographs cannot be accepted as it could not be determined when they were taken; and the affidavits did not contain sufficient objective evidence to which they could be compared to determine whether the attestations were credible, plausible, or internally consistent with the record. The director determined that the applicant's claim to have entered the United States prior to January 1, 1982, had no credibility as her son was born in Sri Lanka on January 24, 1982.

In regards to her Form I-94, the applicant, on appeal, asserts:

You have mentioned that I have submitted an I-94 showing an entry into the United States with a B-2 visa on June 14th 1985. You have made a big mistake in your findings. I never submitted an I-94 with that date. You have not carefully looked at the I-94 which I have submitted to you with regard to my visit.

The applicant's assertion, however, is specious as the Form I-94 provided by the applicant clearly reflects that she entered the United States with a B-2 visa on December 15, 1985 and was initially authorized to stay until June 14, 1985.

In regard to her rescheduled interview, the applicant asserts, "I was called for an interview on November 27th 2007 and not on November 22nd 2007 as you have mentioned in your decision.

The applicant's assertion is without merit as the director's decision clearly indicated, "[o]n a rescheduled appointment date on November 27, 2007."

In regards to her son, the applicant asserts, "I have never denied having this son. I have not mentioned the trip I made to my country for my delivery. This was a very short visit to my county [sic] as I wanted to be with my parents during my confinement."

¹ The applicant's first interview occurred on June 6, 2006.

² The director inadvertently noted that the deed was an apartment lease entered on September 14, 1987.

The statements issued by the applicant have been considered. However, the AAO does not view documents discussed above as substantive enough to support a finding that the applicant entered the United States prior to January 1, 1982, and resided since that date through the date she attempted to file her application, as she has presented contradictory and inconsistent documents, which undermines her credibility.

The applicant asserts that she did not mention her trip to Sri Lanka to have her child because it was a short visit. The applicant's explanation, however, is not plausible as the Form I-687 application specifically requests the applicant to list *all* absences from the United States dating back to January 1, 1982.

The applicant's failure to disclose this absence from the United States is a strong indication that the applicant was not in the United States during this period or may have been outside the United States beyond the period of time allowed by regulation.

The notice from the legacy INS only serves to establish the applicant's presence in the United States during her authorized period of stay.

The applicant claims to have resided in Maryland and Virginia during the requisite period. The applicant, however, provided no contemporaneous evidence or affidavits from affiants who were residing in Maryland and Virginia to attest her residence during these periods.

in her affidavit, indicated that she met the applicant in December 1981 at a family gathering celebrating a birthday; however, she did not give the location where the celebration/party was held. Likewise, the affidavit from [REDACTED] failed to state the applicant's place of residence during the requisite period. The affiants' statements do not provide detailed accounts of an ongoing association establishing a relationship under which the affiants could be reasonably expected to have personal knowledge of the applicant's residence, activities and whereabouts during the requisite period.

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 her claim.

Although the director informed the applicant that photographs could be submitted, the photographs the applicant provided and claims to have been taken in 1981 and 1982 had no identifying evidence, which would serve to either prove or imply that the photographs were taken during the requisite period.

[REDACTED] states that she met the applicant in West Palm Beach, Florida in 1981 and that the applicant was working for her mother as a live-in Home Health Aid. The applicant, however, did not claim on her Form I-687 application to have resided in the state of Florida or to have been employed during the requisite period. Therefore, the authenticity of the affiant's affidavits is questionable at best.

It is incumbent upon an 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, in fact, lies, will not suffice. *Matter of Ho*, 19 I. & N. Dec. 582, 591-92 (BIA 1988).

The inconsistency issues arising from some of the documents provided by the applicant along with 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 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 applicant's reliance upon documents with minimal probative value, it is concluded that the evidence submitted fails to establish continuous residence in an unlawful status in the United States during the requisite period.

Therefore, based upon the foregoing, 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.