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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



L1

DATE: **NOV 08 2011** Office: CALIFORNIA SERVICE CENTER

FILE:

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.

*Elizabeth McCormack*

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, California Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record indicates that the applicant filed a Form I-687 Application for Temporary Resident Status on May 4, 1988. On June 29, 1990, the director denied the application noting that the applicant was excludable and inadmissible under Section 212(a)(15) of the Immigration and Nationality Act (the Act) as an alien likely to become a public charge. The director noted that the applicant failed to apply for the Form I-690 waiver as requested in the director's notice of intent to deny (NOID) dated June 13, 1989.

On July 16, 1990, the applicant filed a Form I-694, Notice of Appeal of Decision under Section 210 or 245A of the Immigration and Nationality Act. On the Form I-694, the applicant checked the box for the application for waiver of grounds of excludability. However, there is no evidence in the record that the applicant filed for waiver of grounds of excludability. On appeal the applicant stated that she should be granted a waiver because of family unity and stated that she had five children born in the United States.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

On March 1, 2010, the AAO issued a notice of intent to deny (NOID) informing the applicant of the deficiencies in the record and providing her with an opportunity to respond. In the NOID, the AAO requested evidence of the applicant's residence in the United States during the requisite period and evidence that the applicant is not likely to become a public charge.

The applicant submitted various documents in response to the AAO's NOID.

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 245(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 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her 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).

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.

The issue in this proceeding is whether the applicant (1) entered the United States before January 1, 1982, (2) has continuously resided in the United States in an unlawful status for the requisite period of time, and (3) is not likely to become a public charge.

In an attempt to establish continuous unlawful residence since before January 1, 1982 through the end of the relevant period, the applicant provided her children's birth certificates, her children's baptismal certificates, and receipts.

The record contains copies of birth certificates for the applicant's children born in the United States on March 12, 1979; October 22, 1980; September 3, 1982; and April 19, 1985. The applicant also listed a fifth child on the Form I-694 born on November 16, 1983 but she did not submit a birth certificate for this child.

The record contains copies of baptismal certificates for the applicant's children baptized in the United States on July 10, 1982 and June 14, 1987.

The record also contains a receipt dated February 8, 1984 and rent receipts dated February 1982; February 6, 1983; August 4, 1985; January 3, 1986; March 6, 1987; and April 13, 1987. The file also contains an Immigration and Naturalization Services (INS) Form I-689 dated May 4, 1988.

Based on the evidence of record the AAO finds that the applicant has established that she resided in the United States from before January 1, 1982 and throughout the requisite period.

The remaining issue in this proceeding is whether you are likely to become a public charge. An applicant for temporary resident status must establish that she is not ineligible for admission under one or more of the categories listed in section 212(a) of the Immigration and Nationality Act. 8 U.S.C. § 1182(a). Among the categories of inadmissible aliens are those likely to become a public charge. If an applicant is determined to be inadmissible under section 212(a)(15) of the Act, he or she may still be admissible under the Special Rule. *See* 8 C.F.R. § 245a.2(d)(4) and (k)(4).

The regulation at 8 C.F.R. § 245a.2(d)(4) provides the factors to be considered in determining whether an applicant is likely to become a public charge and whether the special rule applies.

(4) Proof of financial responsibility. An applicant for adjustment of status under this part is subject to the provisions of section 212(a)(15) of the Act relating to excludability of aliens likely to become public charges. Generally, the evidence of employment submitted under paragraph (d)(3)(i) of this section will serve to demonstrate the alien's financial responsibility during the documented period(s) of employment. If the alien's period(s) of residence in the United States include significant gaps in employment or if there is reason to believe that the alien may have received public assistance while employed, the alien may be required to provide proof that he or she has not received public cash assistance. An applicant for residence who is determined likely to become a public charge and is unable to overcome this determination after application of the special rule will be denied adjustment. The burden of proof to demonstrate the inapplicability of this provision of law lies with the applicant who may provide:

(i) Evidence of a history of employment (i.e., employment letter, W - 2 Forms, income tax returns, etc.);

(ii) Evidence that he/she is self-supporting (i.e., bank statements, stocks, other assets, etc.); or

(iii) Form I - 134, Affidavit of Support, completed by a spouse in behalf of the applicant and/or children of the applicant or a parent in behalf of children which guarantees complete or partial financial support. Acceptance of the affidavit of support shall be extended to other family members where family circumstances warrant.

In the AAO's NOID dated March 1, 2010, the AAO listed evidence that the applicant could submit indicating that she was unlikely to become a public charge including the items listed above and/or any other evidence establishing that she was not likely to become a public charge.

In response to the AAO's NOID, on April 1, 2010 the applicant submitted Internal Revenue Service (IRS) Forms 1040 for 2001 to 2006. In the most recent tax return in the record of proceeding, the 2006 IRS Form 1040, the applicant listed her total income as \$9,920 for a household of three people. According to the Department of Health and Humans Services (HHS) 2006 poverty guidelines, the minimum income for a 3 person family unit was \$16,600. The applicant's total income for 2006 is far less than the amount listed in the HHS 2006 poverty guidelines.

The applicant did not submit any evidence of income from 2007 to 2009, the three years preceding her response to the AAO's NOID. Further, the applicant did not submit a Form I-134, Affidavit of Support, evidence that she is self-supporting, or any other evidence establishing that the applicant is not likely to become a public charge.

As noted above, the regulations at 8 C.F.R. § 245a.2(d)(4) provides the factors to be considered in determining whether the applicant is likely to become a public charge and whether the special rule applies to the applicant. 8 C.F.R. § 245a.2(k)(4) states that the applicant may be admissible even though the applicant's income is below the poverty level as long as the applicant has a consistent employment history which shows the applicant's ability to support herself. The record contains no evidence of employment for the applicant since 2006. 8 C.F.R. § 245a.2(k)(4) states that "the weight given in considering applicability of the public charge provisions will depend on many factors, but the length of time an applicant has received public cash assistance will constitute a significant factor." The record does not establish whether the applicant received public cash assistance. The burden is on the applicant to establish that she is not likely to become a public charge. See 8 C.F.R. § 245a.2(d)(5).

Therefore, based upon the foregoing, although the applicant has established 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, she has not established that she is admissible to the United States. As noted above, the grounds for inadmissibility may be waived for a temporary resident. On June 13, 1989, the director gave the applicant the opportunity to file the Form I-690, Application for Waiver of Grounds of Excludability. No such application has been filed. She was also given the opportunity to file the Form I-134, Affidavit of Support, and has not. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act.

**ORDER:** The appeal is dismissed. This decision constitutes a final notice of ineligibility.