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U.S. Citizenship  
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Services

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41



FILE: [REDACTED]  
MSC-05-239-18346

Office: LOS ANGELES

Date: AUG 13 2007

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. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case 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.

  
Robert P. Wiemann, 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 District Director, Los Angeles, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined the applicant had not demonstrated that she had continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that she attempted to file a Form I-687, Application for Status as a Temporary Resident, with the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS) in the original legalization application period of May 5, 1987 to May 4, 1988. Therefore, the director determined that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and denied the application.

On appeal, the applicant asserts she has continuously resided in the United States since prior to January 1, 1982 through May 4, 1988. She attempts to account for the contradictions in her previously furnished evidence.

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 Immigration and Nationality Act (Act), 8 U.S.C. § 1255a(a)(2).

An applicant applying for adjustment to temporary resident status must 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).

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. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

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 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 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 (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 has furnished sufficient credible evidence to demonstrate that she resided in the United States from prior to January 1, 1982 through the date she attempted to file a Form I-687 application with the Service in the original legalization application period of May 5, 1987 to May 4, 1988. Here, the submitted evidence is not relevant, probative, and credible.

The record shows that the applicant filed a Form I-687, Application for Status as a Temporary Resident, and a Form I-687, CSS/Newman Class Membership Worksheet, with CIS on May 27, 2005. The applicant signed this application under penalty of perjury certifying that the information she provided is true and correct. Part 30 of this application requests the applicant to list her residences in the United States since her first entry. The applicant responded that she resided at [REDACTED] Los Angeles, California from January 1980 until June 1984 and [REDACTED] Anaheim, California from June 1984 until June 1989. Part 32 of this application requests the applicant to list her absences from the United States since entry. The applicant responded that she twice visited Mexico for the duration of one month; the first visit was in September 1986 and the second was in December 1987. Part 33 of this application requests the applicant to list her employment since entry. The applicant responded that she was employed with Pelayo Fashions in Bell, California from February 1981 until February 1983; South Pacific Industries in Santa Ana, California from July 1984 until February 1985; VIP Temporary Services, Orange, CA from April 1986 until December 1987; and Arlin Personnel Services, Inc. from December

1987 until July 1988. The information provided by the applicant on her Form I-687 application is materially inconsistent with documentation contained in her record.

On October 30, 2002, the applicant filed a Form I-485, Application to Adjust Status, based on an underlying Form I-140, Immigrant Petition for Alien Worker. The applicant submitted in support of the petition a letter from letter from [REDACTED] restaurant located in Casimiro Castillo, Jalisco, Mexico, which provides that the applicant was employed at this restaurant from January 6, 1985 until August 28, 1987. This information is inconsistent with the applicant's Form I-687 application. The applicant claims on her application that she was employed with South Pacific Industries in Santa Ana, California from July 1984 until February 1985 and VIP Temporary Services, Orange, CA from April 1986 until December 1987. The applicant also claims that she was residing in the United States at [REDACTED] Anaheim, California from June 1984 until June 1989.

Additionally, the applicant's Form I-485 application, signed under penalty of perjury, states that her son, [REDACTED] was born in Mexico on August 13, 1983. This information is inconsistent with the applicant's Form I-687 application, which provides that she has been absent from the United States since her January 1980 entry on only two occasions; September 1986 and December 1987. Furthermore, the applicant's dates of absence from the United States, September 1986 and December 1987, are inconsistent with the date the applicant was issued a B1/B2 visa from the United States consulate in Guadalajara, Mexico. The applicant's record contains a previously submitted copy of her passport. This passport indicates that the applicant received a B1/B2 visa from the United States consulate in Guadalajara, Mexico on January 28, 1987.

The applicant submitted a Form I-687 application with the Service in an attempt to establish class membership in the League of United Latin American Citizens (LULAC) class action lawsuit. The applicant was interviewed on December 5, 1990 to establish her class membership. The applicant failed to provide the name of her son, [REDACTED] on this application. Moreover, this application states that the applicant was in Mexico for the duration of one month on December 1983; May 1985; and January 1987. This information is inconsistent with the applicant's Form I-687 application, filed pursuant to the CSS/Newman settlement agreements. The information contained in that application indicates the applicant was in Mexico for the duration of one month in September 1986 and December 1987.

Additionally, the applicant's Form I-687 application submitted pursuant to LULAC provides that she was employed as a "baby sitter for [REDACTED] from June 1984 until May 1987. The applicant submitted a letter from [REDACTED] to corroborate this employment information. This employment information is inconsistent with the applicant's Form I-687 application, filed pursuant to the CSS/Newman settlement agreements, which states that the applicant was employed with South Pacific Industries in Santa Ana, California from July 1984 until February 1985 and VIP Temporary Services, Orange, CA from April 1986 until December 1987. The applicant submitted copies of her 1984 and 1985 Form W-2 Wage and Tax

Statements from South Pacific Industries and paycheck stubs from VIP Temporary Services to corroborate this employment information.

Finally, the applicant's Form I-687 application submitted pursuant to LULAC provides that she resided at [REDACTED] Anaheim, California from May 1986. The applicant submitted a copy of her lease for the period of May 3, 1986 until April 3, 1987 to corroborate this residence information. This residence information is inconsistent with the applicant's Form I-687 application, filed pursuant to the CSS/Newman settlement agreements, which states that she resided at [REDACTED] Anaheim, California from June 1984 until June 1989.

The numerous inconsistencies found in the applicant's record seriously undermine the credibility of her claim of residence in the United States for the requisite period, as well as the credibility of all documents submitted in support of such claim. Doubt cast on any aspect of the evidence may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. 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 (BIA 1988).

On December 5, 2005, the applicant was issued a Form I-72 for additional evidence. In response to this request, the applicant submitted statements from [REDACTED] and [REDACTED]. It should be noted that the statements from [REDACTED] and [REDACTED] are unsigned. While these statements provide some information on the applicant's residence in the United States during the requisite period; they do not overcome the numerous inconsistencies found in the applicant's record. On April 3, 2006, the director issued a notice of decision informing the applicant of the denial of her application. This decision, in part, provides:

You have a son born in Mexico on August 13, 1983 . . . You were requested to submit proof prior to January 01, 1982. You did comply [with] the request, however you submitted check stubs from Pelayo Fashions with no company address. The other information is not credible. The affidavits of witnesses, you submitted do not have the specific information of your unlawful residence in the United States as you claimed.

On appeal, the applicant resubmitted statements from [REDACTED] and [REDACTED]. The applicant asserts that she has resided in the United States continuously from prior to January 1, 1982 through May 4, 1988. To meet her burden of proof, an applicant must provide evidence of eligibility apart from her own testimony. 8 C.F.R. § 245a.2(d)(6). The applicant has failed to provide any independent and objective evidence to resolve the inconsistencies noted by the director. The applicant's failure to provide any other evidence to establish her continuous residence in the United States during the requisite period renders a finding that she has failed to satisfy her burden of proof, as required by 8 C.F.R.

§ 245a.2(d)(5). The applicant has not submitted sufficient evidence to establish that her claim is “probably true” pursuant to *Matter of E-M-, supra*.

The absence of sufficiently detailed supporting 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 contradictory statements on her applications and her reliance upon documents with minimal probative value, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the date she attempted to file a Form I-687 application 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.