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U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED]  
MSC-05-008-10054

Office: LOS ANGELES

Date: **AUG 22 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 resided in the United States from June 1981 through 1988. The applicant attempts to account for an inconsistency in her record.

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. 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 Supplement, CSS/Newman Class Membership Worksheet, with CIS on October 8, 2004. The applicant signed her application under penalty of perjury, certifying that the information she provided is true and correct. Part 30 of this application requests the applicant to provide her residences in the United States since her entry. The applicant responded that she resided at [REDACTED] San Fernando, California from June 1981 until June 2002. Part 32 of this application requests the applicant to list her absences from the United States since entry. The applicant indicated on the Form I-687 and testified during her interview that she was in Mexico on two occasions: December 1982 until February 1983 and May 1984 until July 1984. Part 33 of this application requests the applicant to provide her employment in the United States since her entry. The applicant responded with “none,” indicating that she has never been employed in the United States. The applicant’s responses indicate that she has resided in the United States during the requisite period; however this claim is not supported by credible and probative evidence.

The applicant has the burden of proving by a preponderance of the evidence that she has resided in the United States for the requisite period. 8 C.F.R. § 245a.2(d)(5). 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 submitted various documents to establish her residence in the United States. The issue in this proceeding is whether the applicant has furnished credible evidence to demonstrate that she resided in the United States during the requisite period. Hence, this decision will focus solely on documentation that serves to establish the applicant's residence from prior to January 1, 1982 until the date that she attempted to file a Form I-687 application during the original legalization application period.

The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that may be provided to establish proof of continuous residence in the United States during the requisite period. This list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts, or letters. The applicant failed to provide any of these documents in support of her claimed continuous residence in the United States.

An applicant may also submit "any other relevant document." 8 C.F.R. § 245a.2(d)(3)(vi)(L). The applicant submitted in support of her application a notarized "fill in the blank" statement from [REDACTED], which provides that she has known the applicant since 1981. This statement provides:

I met her since the year 1981 when she started renting my mother's [REDACTED] apartment. [A]t that time I had the responsibility to collect all the rents since the year 1981 to 1985 so, I used to see [REDACTED] every month and we got to know each other and started to communicate more often.

Although this statement provides some detailed information on [REDACTED] relationship with the applicant during the requisite period, it does not alone satisfy the applicant's burden of proof. As stated above, 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). The applicant has been given the opportunity to satisfy her burden of proof with a broad range of evidence pursuant to 8 C.F.R. § 245a.2(d)(3). The applicant submitted one notarized statement to satisfy her burden of proof. Prior to the denial of the application, the applicant was issued a Form I-72, where she was provided thirty (30) days to submit additional evidence. Specifically, the Form I-72 requested the applicant to provide proof of her continuous residence in the United States before 1982. The applicant failed to provide any additional evidence of her residence in the United States. The director issued a Notice of

Decision to deny the application that provides, “[t]he information you submitted, however, failed to establish by a preponderance of the evidence, that you are eligible for the benefit. . . your Form I-817 from April 2002 indicates that you began continuous residence in the United States in October 1985 . . .” On appeal, the applicant asserts, “[m]y last arrival was 1985 because I went to my home town to give birth to our child . . . The child’s name is [REDACTED] with DOB: 06/12/1985. She later joined us in 1990.” The applicant also submitted her child’s immunization records and school transcripts.

The applicant’s record contains a copy of her daughter, [REDACTED] birth certificate, filed as corroborating evidence with her Form I-817, Application for Family Unity Benefits. This birth certificate provides that her daughter’s date of birth was on June 7, 1984. It should be noted that this date of birth is inconsistent with the applicant’s assertion that the date of birth for [REDACTED] is June 12, 1985. The applicant testified during her Form I-687 interview that her last absence from the United States was for a trip to Mexico between May 1984 and July 1984 for “child birth.” The applicant’s Form I-687 application was amended to reflect this testimony. The applicant initialed her application to reflect her authorization for this change. The applicant’s explanation on appeal that she last entered the United States in October 1985 after giving birth to her child is, therefore, inconsistent with her Form I-687 application.

Furthermore, the applicant submitted as corroborating evidence with her Form I-817 application, a letter from her former landlord, [REDACTED] which provides, “[t]he applicant is tenant [sic] at [REDACTED] San Fernando, California 91340 since October 1985. Her husband first rented from me in April 1980. His wife joined him in October 1985.” This letter indicates that the applicant first resided in the United States in October 1985. 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. *See Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to resolve the inconsistencies surrounding her October 1985 entry date with independent and objective evidence.

Moreover, the applicant’s assertion that she was in Mexico to give birth to her child on June 12, 1985 and she reentered the United States in October 1985 raises another issue in this proceeding. An alien shall be regarded as having resided continuously in the United States if at the time of filing an application for temporary resident status, no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, through the date the application is filed, unless the alien can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the alien was maintaining residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.1(c). The applicant’s testimony indicates that she had an absence from the United States for a period of between three to four months. This absence is in excess of the forty-five day period delineated in

[REDACTED]

the regulations. If the applicant's absence exceeds the forty-five day period allowed for a single absence, it must be determined if the untimely return of the applicant to the United States was due to an "emergent reason." Although this term is not defined in the regulations, *Matter of C-* defines emergent as "coming unexpectedly into being." 19 I&N Dec. 808 (Comm. 1988). The information provided by the applicant fails to indicate that she had an emergent reason for her untimely return. Therefore, even if the applicant had established her residence in the United States from prior to January 1, 1982, she would be ineligible for temporary resident status based on this break in continuous residence. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

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.