



U.S. Citizenship
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FILE: [Redacted]
MSC-05-203-10584

Office: NEW YORK

Date: **JUL 06 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:



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, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined that the applicant had not established by a preponderance of the evidence that she is eligible for temporary resident status. Specifically, she failed to prove by a preponderance of the evidence that she resided continuously in the United States in an unlawful status. As a result, the director denied the application.

On appeal, the applicant provided a written statement including an explanation of the difficulty in obtaining evidence after the passage of time, a restatement of relevant law, and a reaffirmation that the applicant is eligible for temporary resident status.

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 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 applicant 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 applicant 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 and 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 Immigration and Naturalization Service (INS) 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 submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to Citizenship and Immigration Services (CIS) on April 21, 2005. At part #16 of the Form I-687 application where applicants were asked when they last came to the United States, the applicant indicated she last entered on July 5, 1980. At part #30 where applicants were asked to list all residences in the United States since first entry, the applicant listed [REDACTED], Astoria, New York from 1980 to 1984; [REDACTED] Jackson Heights, New York from 1984 to 1986; and [REDACTED] Jackson Heights, New York from 1986 to present. It is noted that the I-690 Application for Waiver of Grounds of Excludability the applicant attached to her I-687 application lists her current address as [REDACTED], Jackson Heights, New York. At part #32 of the I-687 application, where applicants were asked to list absences from the United States since entry, the applicant listed two visits to Colombia to visit family including a visit from June to July 1984 and a visit from July to August 1987. At part #33 where applicants were asked to list employment in the United States, the applicant indicated she had several jobs at the same time. She listed employment with [REDACTED] as a babysitter from 1980 to 1984; with Electra Cleaning Inc. as a cleaning lady from 1985 to 1986; with Video 44/Compu-Edit, Inc. as a cleaning lady from 1986 to 1986; with [REDACTED] as a home attendant from 1986 to 1986; and with Editors Hideaway Inc. doing maintenance work from 1984 to 1991.

In support of her I-687 application the applicant included only a copy of her original I-687 application submitted on March 14, 1990. At part #33 on the original I-687 application, where applicants were asked to list all residences in the United States, the applicant listed 2 [REDACTED] Astoria, New York from 1980 to 1984; [REDACTED] Jackson Heights, New York from 1984 to 1984; and [REDACTED], Jackson Heights, New York from 1984 to present. The dates and addresses provided in this application are inconsistent with those provided in the I-687 application filed in 2005. Specifically, the first application lists the N [REDACTED] house number as [REDACTED], while the second application lists this address as 89-08. In addition, the first application

indicates the applicant moved to the [REDACTED] location in 1984, while the second application indicates the applicant moved there in 1986.

With her first I-687 application, the applicant included receipts, employment confirmation letters, and other documents. She included a receipt from [REDACTED] in Flushing, New York, dated January 17, 1988, which incorrectly listed the applicant's last name as "[REDACTED]" instead of "[REDACTED]". She also included a receipt from Virginia Furniture written in Spanish, dated October 19, 1981, and listing her address as [REDACTED]. This document is found to be inconsistent with the applicant's most recent Form I-687, which indicated that the applicant did not move to the [REDACTED] address until 1986. The applicant included a letter dated March 12, 1990 from [REDACTED] confirming that the applicant worked for [REDACTED] for six years. The letter states, "I have known [REDACTED], residing at [REDACTED] for a period of six years." This letter is found to be inconsistent with the most recent Form I-687. [REDACTED]'s letter implies that the applicant has lived at the [REDACTED] address since 1984, while Form I-687 indicates she did not move to the [REDACTED] address until 1986.

The applicant included documentation of her medical lab test results from August 29, 1985 at Elmhurst Medical in Jackson Heights, New York. She also included Forms W-2 from Electra Cleaning for 1985; from Editor's Hideaway for 1988; from [REDACTED] for 1986; and from Video 44/Div. Of Compu-Edit for 1986. The applicant provided a letter from [REDACTED] dated March 11, 1990. [REDACTED] stated that he had known the applicant since 1980 and that he currently resided at [REDACTED] Jackson Heights, New York. It is noted that both Forms I-687 indicated that the applicant was living in what appears to be the same building on [REDACTED] when the letter was signed in 1990, yet [REDACTED] did not mention in the letter that the applicant was living in the same apartment building as him. Although not required, [REDACTED] also did not provide a contact telephone number to verify the information in his letter, or documentation of his identity or presence in the United States during the statutory period. The applicant included a notarized letter from [REDACTED] dated March 12, 1990 confirming that he has known the applicant since July 1980. Although not required, [REDACTED] did not provide a contact telephone number or attach supporting documentation of his identity or residence in the United States during the statutory period. The applicant provided a notarized letter from [REDACTED] dated February 9, 1990. [REDACTED] explained that he met the applicant in 1984 when visiting a neighbor in his building on 86th street. Again, it is noted that [REDACTED] did not mention that he was living in the same building as the applicant at the time the letter was drafted, yet the applicant indicated on both Forms I-687 that she was living in what appears to be the same building on [REDACTED] in 1990. Although not required, [REDACTED] did not provide supporting documentation of his identity or residence in the United States during the statutory period.

The applicant included a notarized letter from [REDACTED] dated January 12, 1990. [REDACTED] indicated in the letter that, at the time the letter was drafted, he was the main tenant of the property at [REDACTED], Jackson Heights, New York. [REDACTED] also stated "... [REDACTED] resided with me and my family from July 1980 up to August 1984." This letter is found to be inconsistent with the most recent Form I-687, which indicates the applicant did not move to the [REDACTED] address until 1984. Although not required, [REDACTED] did not attach supporting documentation of his identity or presence in the United States during the statutory period. The applicant included a notarized letter from [REDACTED] dated February 9, 1990. [REDACTED] indicated that she resided with the applicant at [REDACTED], Jackson Heights, NY from 1984

to the time the letter was signed. This conflicts with the information provided on the most recent Form I-687, which indicates that the applicant did not move to the [REDACTED] address until 1986. The applicant included a letter from [REDACTED] at Editors' Hideaway Inc. dated February 13, 1990, which confirms the applicant's employment since approximately 1984. This letter is found not to conform to the standards for letters from employers as described in 8 C.F.R. § 245a.2(d)(3)(i). Specifically, the letter does not include the applicant's exact period of employment, whether or not the information was taken from official company records, where records are located, and whether the Service may have access to the records.

The applicant included a notarized letter from [REDACTED] dated February 1990 confirming the applicant's employment with [REDACTED] from 1980 until 1984. This letter does not conform with the standard set in 8 C.F.R. § 245a.2(d)(3)(i) for employment letters. Specifically, the letter does not include the applicant's address at the time of employment, the exact period of employment, duties with the company, whether or not the information was taken from official company records, where records are located, and whether the Service may have access to the records.

On October 24, 2005, in a Notice of Intent to Deny (NOID), the director referred to the applicant's interview with a CIS officer on October 24, 2005. In this interview, the applicant stated that she entered the United States for the first time in July 1980 from Mexico without inspection. The applicant stated that her first absence from the United States was in June 1984 and that she reentered in July 1984 from Mexico without inspection. The applicant signed a sworn statement attesting to the above statements. The NOID referred to the applicant's original passport contained in her file and identified inconsistencies between the passport and the applicant's statements in her CIS interview. The passport was obtained by the Service in relation to the applicant's apprehension by the United States Border Patrol after she entered the United States without inspection on July 21, 1984. According to its biographical page, the passport was issued to the applicant on May 19, 1983 in Cali Valle, Colombia. Page 28 of the passport contains two stamps indicating an application was received by the US Consulate in Bogota on June 13, 1983 and on May 25, 1984. The dates of the passport issuance and two United States Consulate stamps call into question the applicant's statements in the CIS interview and on Form I-687. Specifically, the applicant indicated in her CIS interview and on her most recent Form I-687 that she first entered the United States in 1980 and was not absent from the United States until she took a trip to Colombia from June to July of 1984. This is inconsistent with the passport stamp and issue date, which indicate the applicant was in Colombia during June 1983 and May 1984. Based on these inconsistencies, the director found that the applicant had not met her burden of proving that she resided in the United States in an Unlawful status from January 1, 1982 through May 4, 1988.

In response to the NOID, the applicant submitted a letter signed by [REDACTED], an individual identified as the director of the law office of [REDACTED], the attorney who appears on the applicant's Form G-28 Notice of Entry of Appearance as Attorney. [REDACTED] reiterated that the applicant entered the United States without inspection on July 5, 1980 and returned to Colombia in June 1984. [REDACTED] stated that the applicant paid agents in Colombia to attempt multiple times to obtain a visa at the United States Consulate. According to [REDACTED], all that the applicant obtained from these agents was a passport issued in May 1983. [REDACTED] explained that the applicant returned to Colombia in June 1984 due to a family emergency, but he did not explain why the applicant would have undertaken efforts in 1983 to obtain a visa to enter the United States when,

according to the applicant's CIS interview testimony and statements on Form I-687 she was already in the United States in 1983.

Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). There is no evidence in the record indicating that the applicant actually undertook the activities [REDACTED] attributes to her. The applicant provided no explanation of the stamps in her passport that indicate she was in Colombia in May and June of 1983 and in May 1984, although she claimed in her CIS interview testimony and on Form I-687 that she did not leave the United States since her entry in 1980 until her visit to Colombia from June to July of 1984. This inconsistency calls into question whether the applicant actually resided in the United States throughout the statutory period. Since [REDACTED] does not claim to have first-hand knowledge of the facts on which his declaration is based, and since the statements of an applicant's attorney do not constitute evidence, the applicant has not overcome these inconsistencies.

In denying the application, the director noted that the letter from [REDACTED] does not constitute evidence, and that the applicant did not provide additional documentary evidence in her response to support the assertions of [REDACTED]. The director found that the applicant had not established by a preponderance of evidence that she is eligible for temporary resident status.

On appeal, the applicant signed a written statement prepared by [REDACTED]. The statement lists [REDACTED] as Law Office Director for [REDACTED]s, Attorney at Law. This statement summarizes the requirements for temporary residence, explains the difficulty in maintaining evidence after the passage of time, and reiterates that the applicant has been working in the United States since 1980. The statement declares that, "There is no evidence as to the contrary as to applicant's residency during the years 1981 through 1988." This sentence conflicts with the facts as established in the NOID and the denial of the application. Specifically, this sentence does not acknowledge the stamps in the applicant's passport that conflict with the applicant's statements regarding her periods of absence from the United States. Later in the written statement, reference is made to the explanation of the applicant's passport that was provided in the letter from [REDACTED] in response to the NOID. The written statement provided on appeal offers no explanation for the inconsistencies between the applicant's passport and her statements in her application and interview. No additional evidence was offered on appeal to support the applicant's statements regarding her residence in the United States.

In summary, the applicant has provided contemporaneous evidence of residence in the United States relating to the latter part of the 1981-1988 period, including a medical lab test document from August 29, 1985 and Forms W-2 for 1985, 1986 and 1988. However, the applicant has provided limited evidence of her residence in the United States prior to 1984. The applicant provided only one piece of contemporaneous evidence relating to the period prior to 1984. This receipt, dated October 19, 1981, listed an address for the applicant that was inconsistent with information she provided in the I-687 application. In addition, the applicant has provided multiple letters that contradict her statements and are not accompanied by supporting documentation. She provided three letters relating to the period prior to 1984. In [REDACTED]'s letter, [REDACTED] failed to identify the applicant as his neighbor or mention that she lives in his apartment building, although the applicant indicated in her I-687 applications that in 1990 she was living at the building address listed by [REDACTED]

██████████ in his letter. ██████████ did not provide a contact telephone number, identity documentation, or documentation of his presence in the United States during the statutory period. The applicant also provided a letter from ██████████ confirming that the applicant lived with ██████████'s family from 1980 to 1984. This letter was found to be inconsistent with address and date information provided in the most recent Form I-687, which indicates the applicant did not move to the address listed by ██████████ until 1984. Another letter related to the period prior to 1984 was provided by ██████████. ██████████ did not provide a contact telephone number, identity documentation, or documentation of his presence in the United States during the statutory period. The applicant provided no additional evidence that she entered the United States prior to January 1, 1982, and she provided no explanation of the inconsistencies between her statements and the affidavits she submitted. In addition, the applicant did not explain the passport documentation that indicates she was in Colombia in 1983 and in May 1984. This evidence contradicts her statements in the CIS interview and on the I-687 applications, and it calls into question the applicant's claim to have continuously resided in the United States since January 1, 1982. The limited supporting documentation provided by the applicant is found not to overcome this contradiction.

The absence of sufficiently detailed and consistent 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 contradictory statements and information contained in the applicant's I-687 applications, supporting affidavits, and passport, and given the applicant's 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.

It is noted that the applicant failed to appear for a hearing before an Immigration Judge in Los Fresnos, Texas on September 6, 1984.

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