



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE:

[Redacted]

Office: NEWARK

Date:

JUL 25 2007

MSC 05 294 12111

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:

[Redacted]

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

The district 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 district 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, counsel states that there may have been a miscommunication between the applicant and the interviewing officer during her legalization interview regarding her dates of absence outside the United States. Counsel submits two letters in support of the applicant's claim, along with a photocopy of the biographic page of the applicant's expired passport.

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).

The sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony. 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.* 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 submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on July 21, 2005. At block #30 of the Form I-687 application where applicants are instructed to list all residences in the United States since first entry, the applicant indicated that she resided at “ [REDACTED] Jersey City, New Jersey” from February 1980 to July 1989. At block #32, where applicants are instructed to list all absences outside the United States, the applicant indicated that she was in the Philippines for a “family visit” from April to May 2000. At block #33, where applicants are

instructed to list all employment in the United States since initial entry, the applicant indicated that she was self-employed cleaning houses in New York, New York, from March 1986 to the filing date of the application.

At her interview with a CIS officer on November 17, 2005, the applicant claimed that she first entered the United States in June 1979. According to the notes of the interviewing officer, the applicant stated that she returned to the Philippines in September 1985 because she was pregnant. She stated that her child was born in the Philippines on September 9, 1985. When the interviewing officer asked the applicant when she returned to the United States, she stated that she returned to the United States with her child on May 26, 2000.

In support of her application, the applicant submitted a photocopy of a Form I-94, Arrival/Departure Record, indicating the applicant was admitted to the United States at New York, New York, on May 26, 2000, as a nonimmigrant B-2 visitor with stay authorized to November 25, 2000 and a photocopy of her New Jersey driver's license issued on October 31, 2005. The applicant did not submit any evidence to establish continuous residence in the United States during the period from prior to January 1, 1982 to May 4, 1988.

On February 21, 2006, the district director informed the applicant of her intent to deny the application because the applicant had not submitted sufficient documentation to establish continuous unlawful residence in the United States during the period in question. The district director noted that the applicant stated during her legalization interview that she was in the Philippines from September 1985 to May 2000, a period of fifteen years. The applicant, in response, stated:

There is a discrepancy stating that I left [the] United States on September 1985, due to my pregnancy. On October 8, 1985, a month later[,] I came back to the United States after I delivered my daughter. I did not stayed [sic] in the Philippines for fifteen years, therefore I was in the United States during the statutory period.

Within that period of time I had been resid[ing] continuously in the United States. I traveled outside the United States on April 26, 2000, to the Philippines to pick up my daughter and came together with my daughter on May 26, 2000. Because my mother passed away nobody will take care of my daughter.

The applicant did not submit any independent evidence to corroborate her statements.

On appeal, counsel reiterates the applicant's claim that there may have been a misunderstanding between the applicant and the interviewing officer regarding her dates of absence outside the United States.

The applicant's statement during her legalization interview that she was outside the United States from 1985 to 2000 contradicts her current claim that she departed the United States in September

1985 to have her baby and returned to the United States in October 1985 after the birth of her baby. It also contradicts her statement during her legalization interview that she was outside the United States from April to May 2000 to pick up her daughter and bring her to the United States. The applicant has not submitted any independent evidence to corroborate her claim that she was only outside the United States for one month, from September to October 1985. It is noted that the applicant did not list an absence outside the United States in 1985 on her Form I-687 application. It is further noted that an interpreter was present during the applicant's legalization interview to translate the interviewing officer's questions and the applicant's answers.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, it is incumbent on the 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 lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

Counsel submits a letter dated April 11, 2006, from [REDACTED] [REDACTED] states that the applicant worked for her as a housekeeper two times a week during the period from 1987 to 1990.

Pursuant to 8 C.F.R. § 245a.2(d)(3)(1), an applicant may submit letters from employers to establish continuous residence in the United States during the requisite period. Letters from employers should be on employer letterhead stationery, if the employer has such stationery, and must include the applicant's address at the time of employment, the exact period of employment, periods of layoff if any, the applicant's duties during his or her employment with that employer. In this case, [REDACTED] employment letter does not confirm to this standard. [REDACTED] does not provide the applicant's address(es) during the time the applicant worked for her. Furthermore, [REDACTED] cannot attest to the applicant's residence in the United States throughout the requisite period since she indicates that the applicant didn't work begin working for her until 1987. Therefore, this letter will be accorded little evidentiary weight.

Counsel also provided a letter dated March 30, 2006, from [REDACTED] [REDACTED] states that the applicant came to the United States in 1979 and returned to the Philippines to deliver her baby in 1985. [REDACTED] indicates that the applicant returned to the United States one month after the birth of her baby and subsequently returned to the Philippines in May 2000 to get her daughter and bring her back to the United States. [REDACTED] does not provide any information regarding the basis of her knowledge regarding the applicant's absences outside the United States, nor does she provide the applicant's address(es) in the United States throughout the requisite period. Therefore, this letter will be accorded little evidentiary weight.

Counsel includes a photocopy of the biographic page of the applicant's prior passport, which was issued in New York, New York on May 15, 1997 and expired on May 14, 1998. This passport is dated after the requisite period to establish continuous residence in the United States.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1979-88 period, and has submitted letters from only two people concerning that period, both of which lack sufficient verifiable detail. Furthermore, as previously stated, the applicant has made conflicting claims regarding her dates of absence outside the United States.

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 application and during her legalization interview 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 he 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.