



U.S. Citizenship
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FILE:

MSC 05 179 15158

Office: NEW YORK

Date: JUN 12 2007

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. 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.

A handwritten signature in black ink, appearing to read "R. P. Wiemann".

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. [REDACTED] 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 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 provided a written statement reiterating facts included in the applicant's Form I-687 and providing additional detail.

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 submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on March 28, 2005. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant showed her first address in the United States to be at [REDACTED] Brooklyn, New York, from May 1981 to December 1985. The applicant listed her second address in the United States as [REDACTED] Brooklyn, New York, from December 1985 to December 1990. In support of her Form I-687 application, the applicant also provided a copy of a French language version of her birth certificate without English translation, a bank statement indicating account activity from December 31, 2004 to February 28, 2005, Form I-864 Affidavit of Support of [REDACTED] on behalf of the applicant, and four affidavits from individuals claiming knowledge of the applicant.

The four affidavits provided by the applicant with her Form I-687 included affidavits from [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. None of these affidavits confirms that the applicant entered the United States prior to January 1, 1982. Ms. [REDACTED] affidavit and Ms. [REDACTED] affidavit are nearly identical. Other than the sections identifying the affiants, these affidavits only differ in that Ms. [REDACTED] listed three known past addresses for the applicant, where Ms. [REDACTED] listed only two known past addresses for the applicant. Both affiants indicated that they have known the applicant since 1981 and identified the applicant as a friend. Neither affidavit contains any dates of the applicant's residence at

each listed address, provides any testimony regarding the applicant's time of entry into the United States, or confirms Applicant's presence in the United States throughout the statutory time period.

The other two affidavits initially provided by the applicant also do not confirm her presence in the United States during the entire statutory time period. In Ms. [REDACTED]'s affidavit, the affiant identified herself as the applicant's sister. She also confirmed the applicant is currently living with Ms. [REDACTED] and identified Ms. [REDACTED] as the affiant's aunt. The last initial affidavit was provided by Ms. [REDACTED]. In her affidavit, Ms. [REDACTED] confirmed that the applicant has been residing with her for over twenty years, identified the affiant's current address as [REDACTED] Rosedale, New York, and identified the applicant as Ms. [REDACTED] brother's daughter. Considering that the affidavit was signed on March 18, 2005, it conflicts with the Form I-687 application, which indicates that the applicant did not begin residing at [REDACTED] until 1990. There is nothing in the record to explain this inconsistency.

At her interview with a CIS officer on November 22, 2005, the applicant stated that she came to the United States on May 21, 1981. She indicated she entered the United States with her father. The applicant and her father immediately went to live with her aunt [REDACTED]. After about five years, the applicant and her father moved to the house of another aunt, [REDACTED]. The applicant also indicated she moved in with Ms. [REDACTED] in 1988. This statement conflicts with the applicant's statement that she lived with Ms. [REDACTED] for about five years. It also conflicts with Form I-687, where applicant did not indicate her address changed in 1988. There is nothing in the record that explains these inconsistencies. The applicant also indicated that the two nearly identical affidavits she submitted were written independently of each other. Considering the striking similarities between the two affidavits, this statement calls into question the credibility of the applicant and the affidavits.

On January 19, 2006, in a Notice of Intent to Deny, the director explained that the affidavits submitted by the applicant were neither credible nor amenable to verification. The affidavits did not include a document identifying the affiant, proof the affiant was in the United States during the statutory period, proof of the relationship between the affiant and the applicant, and a current phone number at which to contact the affiant for verification. The director also noted that none of the affidavits attested to the applicant's residence in the United States prior to January 1, 1982, and none of the affidavits included proof of direct personal knowledge of the events being attested. The director found that the applicant failed to submit credible documents which would constitute a preponderance of evidence confirming the applicant's residence in the United States during the statutory period.

In response to the Notice of Intent to Deny, the applicant provided new affidavits from Ms. [REDACTED] and Ms. [REDACTED] together with a copy of Ms. [REDACTED] naturalization certificate. Neither affidavit confirmed that the applicant entered the United States prior to January 1, 1982. In her second affidavit, Ms. [REDACTED] stated that the applicant entered the United States in 1982. This statement is inconsistent with the applicant's statements on Form I-687 and her testimony in the CIS interview. There is nothing in the record that explains this inconsistency. In her affidavit, Ms. [REDACTED] also identified herself as the applicant's aunt. There is nothing in the record that explains the fact that Ms. [REDACTED] identified herself in her original affidavit as merely the applicant's friend and did not indicate the applicant was her niece. In her second affidavit, Ms. [REDACTED] identified herself as the applicant's father's first cousin. Ms. [REDACTED] also explained that the applicant has been living in the

United States since the age of seven. According to her date of birth as listed on form I-687, the applicant did not turn seven until August 24, 1982. There is nothing in the record to explain the inconsistency between Ms. [REDACTED]'s statement regarding the applicant's time of entry to the United States and the applicant's statements regarding her time of entry both on Form I-687 and in the CIS interview. Ms. [REDACTED] affidavit included no supporting documentation. By stating that the applicant arrived in the United States in 1982, both of the two additional affidavits detract from the applicant's claim to have entered the United States prior to 1982.

In denying the application, the director noted that the two additional affidavits stated the applicant did not enter the United States until 1982. The director also noted that the applicant submitted no other evidence that she entered the United States unlawfully before January 1, 1982. As a result, the director found that the applicant failed to prove she entered the United States unlawfully before January 1, 1982 or that she resided in the United States unlawfully and was physically present until May 4, 1988.

On appeal, the applicant restated facts she had listed on her I-687 application and provided in the CIS interview. Specifically, she reiterated that she first entered the United States on approximately May 27, 1981. The applicant provided no explanation of the inconsistencies between her own statements regarding her date of entry into the United States and the statements contained in the affidavits she submitted. The applicant also failed to provide additional documentation of her presence in the United States since January 1, 1982.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period, and has submitted affidavits that do not document her presence in the United States prior to January 1, 1982 and conflict with her testimony. Specifically, the four original affidavits submitted by the applicant do not indicate the date that the applicant entered the United States. Two affidavits list past addresses of the applicant but lack detail regarding the dates that the applicant lived at each address. Ms. [REDACTED] first affidavit also conflicts with the dates of residence listed on the Form I-687. None of the original affidavits included any supporting documentation of the affiant's identity or presence in the United States, or the affiant's relationship to the applicant. The two additional affidavits the applicant submitted both stated the applicant entered the United States in 1982. These affidavits conflict with the applicant's statements and suggest that she did not enter the United States prior to January 1, 1982. Therefore, these affidavits not only fail to support but also detract from her claim. The applicant provided no evidence that she entered the United States in 1982, and she provided no explanation of the inconsistencies between her statements and the affidavits she submitted.

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 contained in applicant's I-687 application and supporting affidavits, and 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.



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