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FILE:

MSC-05-337-11733

Office: LOS ANGELES

Date:

NOV 07 2007

IN RE:

Applicant:



APPLICATION:

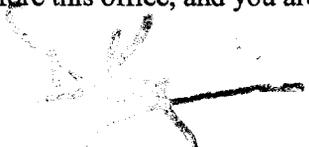
Application for Status as a Temporary Resident pursuant to Section 245A of the  
Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

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.

  
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 failed to meet her burden of proof by a preponderance of the evidence that she resided in the United States for the requisite periods, and denied the application.

On appeal, the applicant stated that the immigration officer who conducted her interview did not allow her to provide the documentation she had. The applicant requested that an officer review her documentation, which provides sufficient evidence of her residency. The applicant also provided additional documentation in support of her application.

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 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 Citizenship and Immigration Services (CIS) on September 2, 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 listed the following addresses during the requisite period: [REDACTED], California from 1984 to 1984; and [REDACTED] 1985 to 2005. The applicant listed no addresses in the United States prior to 1984. At part #33 where applicants were asked to list all employment in the United States since first entry, the applicant listed only the following position during the requisite period: farm labor contractor for [REDACTED] V [REDACTED] California from 1985 to 1988.

With her Form I-687 application, the applicant provided a letter from [REDACTED] of Sun Valley Harvest, Inc. In this letter, [REDACTED] stated that the applicant worked for Sun Valley Harvest, Inc. from 1985 to 1988. This letter fails to conform to regulatory standards for letters from employers. Specifically, the letter does not include the applicant's address at the time of employment and the applicant's exact period of employment. 8 C.F.R. § 245a.2(d)(3)(i).

The record indicates the applicant was interviewed by an immigration officer on April 7, 2006. The record of the interview indicates the applicant stated she moved to the United States to live in 1984. In 1980 she would come to the United States alone or with her mother to do shopping every week or every two weeks, and would go back the same day. According to 8 C.F.R.

§ 245a.2(h)(1), an applicant for temporary resident status shall be regarded as having resided continuously in the United States if, at the time of filing of the application, no single absence from the United States has exceeded 45 days, and the aggregate of all absences has not exceeded 180 days between January 1, 1982 through the date the application for temporary resident status is filed, unless the applicant can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed. Since the applicant stated that she was absent from the United States no less than six days out of seven from 1980 until 1984, the aggregate of all her absences during the requisite period must have exceeded 180 days. Since the applicant failed to establish that emergent reasons kept her from timely returning to the United States, she is found not to have resided continuously in the United States throughout the requisite period.

In denying the application, the director noted that the applicant had indicated in her interview with an immigration officer that she came to stay permanently in the United States in 1984. The director determined the applicant failed to meet her burden of proof by a preponderance of the evidence that she resided in the United States for the requisite periods.

On appeal, the applicant stated that the immigration officer who conducted her interview did not allow her to provide the documentation she had. The applicant requested that an officer review her documentation, which provides sufficient evidence of her residency. The applicant also provided a declaration from [REDACTED] dated June 13, 2006. In this declaration, [REDACTED] stated that the applicant has lived with her since 1984 at [REDACTED] California. This declaration is inconsistent with the information provided on Form I-687. Specifically, the applicant indicated on Form I-687 that she did not begin residing at 686 Tangerine until 1985. This inconsistency calls into question whether [REDACTED] can confirm the applicant's residence in the United States during the requisite period. It is noted that the applicant did not refute that she came to reside permanently in the United States in 1984, rather than prior to 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. She has submitted letters that do not confirm her residence prior to 1984, do not conform to regulatory standards, and conflict with her statements on Form I-687. Specifically, the letter from [REDACTED] does not conform to regulatory standards and does not confirm the applicant resided in the United States prior to 1985. The declaration from [REDACTED] is inconsistent with the applicant's statements on Form I-687 and does not confirm she resided in the United States prior to 1984. In addition, the applicant's statements in her interview with an immigration officer and on Form I-687 indicate she did not reside in the United States until 1984.

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 the applicant's I-687 application and supporting letters, the applicant's failure to provide evidence of her residence in the

United States prior to 1984, and the applicant's statements indicating she did not reside in the United States until 1984, 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.