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FILE: [REDACTED]
MSC-05-179-10042

Office: LOS ANGELES

Date: NOV 21 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.

A handwritten signature in black ink, appearing to read "R. 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. 87-4757-WDK (C.D. Cal) February 17, 2004, (CSS/Newman Settlement Agreements) was denied by the District Director, Los Angeles, and that decision 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. Specifically, the director noted that the applicant failed to submit sufficient documentation to establish that she was eligible to adjust status to that of a Temporary Resident. 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.

In this case, the director adjudicated the Form I-687 application on the merits. As a result, the director is found not to have denied the application based on class membership.

On appeal, the applicant asserts that she has continuously resided in the United States for the duration of the requisite period. She states that she previously submitted all available evidence in support of her application. She submits two (2) additional affidavits in support of her claim.

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) and 8 C.F.R. § 245a.2(b)(1).

Applicants who are eligible for adjustment to Temporary Resident Status are those who establish that he or she entered the United States prior to January 1, 1982, and who have thereafter resided continuously in the United States in an unlawful status, and who have been physically present in the United States from November 6, 1986, until the date of filing the application. 8 C.F.R. § 245a.2(b)(1).

An applicant shall be regarded as having resided continuously in the United States if, at the time of filing no single absence from the United States has exceeded forty-five (45) days and the aggregate of all absences has not exceeded one hundred eighty (180) days between January 1, 1982 and the date of filing his or her application for Temporary Resident Status unless the applicant establishes that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed. 8 C.F.R. § 245a.2(h)(1)(i).

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, during the original legalization

application period of May 5, 1987 to May 4, 1988, 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 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).

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 addresses in the United States to be the following: 648 Stamoules Street in Mendota, California, from May 1985 to May 1986; 140 [REDACTED] in Placentia, California from July 1985 until May 1986; and then 140 w. [REDACTED] in Placentia, California from June 1986 until September of 1988. At part #31 of this application, where the applicant was requested to list all churches and organizations of which she was a member, the applicant indicated that she was not a member of any churches or organizations. At part #33, the applicant showed her first employment in the United States to be for [REDACTED] Farm Labor Contractor in Firebough, California from May 1985 to May 1986.

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 regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that an applicant may

submit 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. An applicant may also submit any other relevant document pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided the following documentation that is relevant to the requisite period:

Tax documents:

- Her Form 1040A and Form W-2 from 1988
- Her Form 1040A and Form W-2 from 1987
- Her Form 1040A from 1986

Though these documents show that the applicant was employed in the United States from 1986 until 1988, they do not establish that she resided continuously in the United States from a date before January 1, 1982 until 1986. Therefore, though they establish that the applicant resided and was employed in the United States for part of the requisite period, they do not establish that she resided in the United States for the duration of that period.

Employment Letter:

- A letter from [REDACTED], Farm Labor Contractor, who states that the applicant worked on his farm from May 1, 1985 to May 1, 1986. [REDACTED] states that the applicant worked in the [REDACTED] at that time. Though this employment verification letter shows employment that is consistent with what the applicant showed on her Form I-687, it does not pertain to the duration of the requisite period. Therefore, it carries no weight in establishing that the applicant resided continuously in the United States for the duration of the requisite period.

It is noted that the applicant has submitted tax documentation for years subsequent to the requisite period. The issue in this proceeding is the applicant's residence in the United States during the requisite time period. Because these documents verify the applicant's presence in the United States subsequent to the requisite time period, they are not relevant evidence for this proceeding.

Thus, on the application, which the applicant signed under penalty of perjury, she showed that she resided and worked in the United States since May 1985. The only evidence submitted with the application that is relevant to the 1981-88 period in question showed the applicant worked from May 1985 to May 1986.

In denying the application, the director noted the above, and stated that her office did not find the letter of employment from [REDACTED] to be credible. She went on to say that the evidence submitted did not allow the applicant to prove, by a preponderance of the evidence that she resided continuously in the United States for the duration of the requisite period.

On appeal, the applicant asserts that she did reside continuously in the United States for the duration of the requisite period. She states that through the passage of time, she has lost or thrown away many of her documents. She goes on to say that she is submitting two (2) affidavits in support of her claim.

She furnishes an affidavit from [REDACTED] who states that the applicant resided in Anaheim, California since December of 1980. She indicates that she met the applicant at a church event. It is noted here that while the applicant indicated on her Form I-687 that she lived in Anaheim at one time, she showed that her residence there began in October of 1988, after the requisite period. She did not show an address of residence prior to May of 1985 on her Form I-687. Further, though the affiant indicates that she met the applicant at a church event, she does not indicate when this event was, at which church or whether the church was in the United States. It is noted here that the applicant indicated that she was not a member of any church on her Form I-687. Though not required to do so, the affiant failed to submit proof of her identity or proof that she herself was present in the United States during the requisite period. Because the affidavit contains testimony that conflicts with what the applicant showed on her Form I-687, doubt is cast on assertions made in the affidavit. Because of its significant lack of detail and because it conflicts with other evidence in the record, very minimal weight can be afforded to this affidavit in establishing that the applicant resided in the United States during the requisite period.

Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The applicant further submits an affidavit from [REDACTED] who states that he has personal knowledge that the applicant has lived in Anaheim, California since April of 1981. He states that he met the applicant at school. He does not indicate which school he met the applicant at or whether the school was in the United States. It is noted here that while the applicant indicated on her Form I-687 that she lived in Anaheim at one time, she showed that her residence there began in October of 1988, after the requisite period. Though not required to do so, the affiant failed to submit proof of his identity or proof that he himself was present in the United States during the requisite period. Because the affidavit contains testimony that conflicts with what the applicant showed on her Form I-687, doubt is cast on assertions made in the affidavit. Because of its significant lack of detail and because it conflicts with other evidence in the record, very minimal weight can be afforded to this affidavit in establishing that the applicant resided in the United States during the requisite period.

As is 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). However, the applicant has provided contemporaneous evidence of residence in the United States that relates only to the years 1986-1988 and not the duration of the requisite period. She has submitted attestations from only two (2) people concerning the duration of the requisite period and both of these attestations contain testimony that conflicts with other evidence in the record.

The absence of sufficiently detailed 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 inconsistencies in evidence submitted by the applicant 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.