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FILE: [Redacted]
MSC-05-132-10003

Office: NEW YORK, NY

Date: NOV 23 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:

[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 [REDACTED] 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 that decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because she found the evidence submitted with the application was insufficient to establish eligibility for Temporary Resident Status pursuant to the terms of the [REDACTED] Agreements. Specifically, in her Notice of Intent to Deny (NOID), the director noted that the applicant, who claimed to have resided continuously in the United States since 1981, used an interpreter during her interview. She went on to say that though the applicant submitted affidavits from four (4) individuals, none of the affiants provided phone numbers. Therefore the Service could not verify information in those affidavits. The director went on to say that credible affidavits include documents identifying the affiant, proof that the affiant was in the United States during the requisite period and proof that there was a relationship between the applicant and the affiant. Here, the director found the affidavits lacking. She granted the applicant thirty (30) days within which to submit additional documents in support of her application. Though the director noted that she received evidence from the applicant in response to her NOID, she stated that the documents were insufficient to overcome her grounds for denial as stated in her NOID. Therefore, she denied the application.

The district director noted that the applicant signed a statement indicating that she had not applied or been discouraged from applying for Temporary Resident Status during the original legalization application period. The director found that this contradicted her claim to class membership on her [REDACTED] (LULAC) Class Membership Worksheet. However, the district director did not base the denial of the application on failure to establish class membership and adjudicated the application on the merits.

On appeal, the applicant asserts that she arrived in the United States on November 12, 1981 and is eligible to adjust status to that of a Temporary Resident. She resubmits her rebuttal to the director's NOID and submits new and updated affidavits 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 Act, 8 U.S.C. § 1255a(a)(2). The applicant must also 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). The regulations clarify that the applicant must be 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).

Under the [REDACTED] Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "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. CSS Settlement Agreement paragraph 11 at page 6; [REDACTED] Settlement Agreement paragraph 11 at page 10.

The applicant 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 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. 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 the Service on February 17, 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 during the requisite period to be [REDACTED] in Brooklyn, New York from November of 1981 until August of 1990. At part #31 where the applicant was asked to list all organizations and churches of which she was a member the applicant stated that she was not a member of any organizations or churches. At part #32 where the applicant was asked to list all of her absences, she indicated that during the requisite period she had one absence from February 2, 1988 until March 11,

1988. At part #33, where the applicant was asked to list all of her employment since her date of entry she indicated that she worked as a housekeeper at [REDACTED] in Brooklyn New York from December of 1981 until October of 1993.

The record also contains a Form I-687 application submitted to the Service on March 24, 1992. Here, the applicant represented her address of residence, absences from the United States and place of employment consistently with what she showed in 2005. It is noted that here, the applicant also stated that she was not a member of any churches or organizations.

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:

Photocopies of passports pages that indicate the following:

- Pages 2 and 3 of passport [REDACTED] that indicate that this passport was issued to the applicant.
- Page 21 of passport [REDACTED], which shows a visa issued to the applicant on January 30, 1990 in Poland and indicates that the applicant used it to enter the United States on March 24, 1990 in New York. It is noted that the applicant indicated at part #32 of her Form I-687 that she was absent in 1990, but there, she stated that the duration of that absence was from January 25, 1990 to March 4, 1990. This stamp indicates that the applicant did not accurately represent the dates associated with that absence on her Form I-687.
- Unnumbered pages of passport [REDACTED] that show that passport was issued to the applicant on September 28, 1994. This passport was issued in New York at the Polish Consul.

Other documents:

- A hospital document translated from Polish into English that shows that the applicant's son was hospitalized from January 15, 1988 until March 5, 1988 because of a heart condition.

- A translation of an airline reservation for the applicant leaving Warsaw for Montreal on March 6, 1988 and a corresponding letter dated September 10, 1991 from the Polish Tourist Society stating that the applicant purchased an airline ticket from Warsaw to Montreal with a departure date of March 6, 1988.
- A letter signed on July of 1991 from [REDACTED] stating that he took the applicant to the airport in February of 1988. It is noted that the record indicates that the applicant did not show her passport at the time of her interview with the Service in 1992 as confirmation of this departure.
- A letter dated June 12, 1991 stating that Polish Airlines in New York cannot provide information regarding passenger reservations more than one year after travel has occurred.
- Various illegible receipts.
- A letter written by the applicant and notarized on March 21, 1991 declaring that the applicant has been self-employed doing odd jobs since December of 1981. It is noted here that the applicant indicated on her Form I-687 that she was employed as a housekeeper at a specific address for the duration of the requisite period. Therefore, doubt is cast on whether the applicant has represented her employment during the requisite period accurately either in this statement or on her Form I-687.
- A letter from the reverend of the St. Francis de Chantal R.C. Church in Brooklyn, New York that states that the applicant was a parishioner from 1982 to August of 1990. The letter states that the applicant was very involved in activities in this church. It is noted that when the applicant was asked to list all churches of which she was a member on her Forms I-687, both in 1992 and in 2005 the applicant indicated that she had never been a member of any churches while residing in the United States. Therefore, this letter is not consistent with other evidence in the record. Doubt is therefore cast on the credibility of statements in this letter.

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).

- A letter from the medical office of [REDACTED] that is dated March 1, 1991 and states that the applicant was treated in his office from June 19, 1982 to December 13, 1984 and then March 12, 1985 to May 10, 1985. The regulation at 8 C.F.R. § 245a.2(d)(3)(iv) provides that credible proof of residence may be in the form of "medical records showing treatment or hospitalization of the applicant." The regulation further provides that these records "must show the name of the medical facility or physician and the date(s) of the treatment." This letter fails to provide medical records showing the medical treatment of the applicant. The letter also fails to indicate

the source of information [REDACTED] referred to in order to obtain the applicant's start date as his patient. It is further noted that currently, this doctor, who had license number 089966 has had his license revoked due to disciplinary action taken against this doctor. This has been verified by the New York State Education Department's Office of the Professions website at: <http://www.nysed.gov/coms/op001/opscr2?profcd=60&plicno=089966>. Because of this letter's lack of detail and because it appears this doctor is not currently licensed, very minimal weight can be afforded to this letter as proof that the applicant resided in the United States during the requisite period.

- An affidavit of co-habitation dated January 21, 1991 from [REDACTED] that states that the applicant lived with him from 1981 until an unspecified date. Here, the affiant has not provided an end date for his co-habitation with the applicant. Further, he has failed to provide an address in the United States at which he is claiming that he and the applicant resided. Because of the significant lack of detail contained in this affidavit, it can be afforded minimal weight as evidence that the applicant resided continuously in the United States for the duration of the requisite period.
- A statement from [REDACTED] who states that he has known the applicant since May of 1983. He states that the applicant is a friend and co-worker. Here, [REDACTED] has not stated where he met the applicant or whether he met her in the United States. He has failed to indicate where either he or the applicant work. Because of the lack of detail of this affidavit and because it does not pertain to the duration of the requisite period, minimal weight can be afforded to this affidavit as proof that the applicant resided in the United States during the requisite period.
- A statement from [REDACTED] dated December 18, 1990 in which [REDACTED] says that she has been friends with the applicant from 1981 until she submitted the letter. Here, [REDACTED] does not indicate how she first met the applicant and she fails to indicate whether she met her in the United States. She does not offer proof that she herself resided in the United States during the requisite period or to indicate that it is personally known to her that the applicant resided in the United States for the duration of the requisite period. Because of its lack of detail, this statement can be afforded minimal weight as proof that the applicant resided in the United States during the requisite period.
- Photocopies of six (6) envelopes mailed to the applicant at [REDACTED]. Here, it is noted that the applicant indicated that she resided at [REDACTED] on her Form I-687 on the dates that correspond with the postmark dates on these envelopes. These envelopes are postmarked during the requisite period. The applicant has not indicated that she is associated or has ever been associated with the address shown on any of these envelopes. Because the address is not one that the applicant has shown she ever resided at, because these envelopes are photocopies that are not completely legible, and because these envelopes only offer proof that six letters were mailed to an individual bearing the applicant's name at various points during the requisite period very little weight can be afforded to these photocopies of envelopes as proof that the applicant resided in the United States during the requisite period.

In response to the director's NOID, the applicant submitted the following:

- A statement from [REDACTED] stating that he went to a New Year's party with the applicant in December of 1981. He states that this party occurred in New York. He goes on to say that at that time the applicant was living at [REDACTED] in Brooklyn. However, [REDACTED] has not submitted evidence that he himself was residing in the United States during the requisite period. Because of this and because of the lack of detail in this affidavit, it carries very little weight in establishing the applicant's presence in the United States during the requisite period.
- A letter from [REDACTED] stating that the applicant has been a member of his parish, St. Frances de Chantal since December 15, 1981. It is noted here that this statement is not consistent with other evidence in the record. The applicant's previously submitted statement from this church states that she did not attend this church until 1982. The letter indicates that the applicant resided at [REDACTED] in apartment [REDACTED] at the time she was a member. However, the applicant has indicated that she lived at [REDACTED] during the requisite period. Further, as was previously noted, the applicant was asked to list all churches of which she was a member on both her 1992 and 2005 Forms I-687, she indicated that she was not a member of a church. Therefore, doubt is cast on the statements made in this letter regarding the applicant's church membership.
- A statement from [REDACTED] who states that he is a friend of the applicant's. He goes on to say that he knows that she lived in the United States since 1981. However, he fails to indicate how he met the applicant, to show an address at which it is personally known to him that the applicant resided or to indicate whether he resided in the United States during the requisite period.
- A statement from the applicant's attorney in which he states that affiants [REDACTED], and [REDACTED] obtained legal status as LULAC members and therefore they were present in the United States for the duration of the requisite period.

Thus, on the application, which the applicant signed under penalty of perjury, she showed that she resided and worked in the United States since 1981. The applicant provided no proof of employment other than a letter that she has written which contradicts what she indicated on her Form I-687. She has provided a medical letter from a physician who has had his license revoked which is not detailed, letters from a church when she claims on her Form I-687 states she is not member of any churches and attestations from individuals who offer no proof that they were present in the United States during the requisite period.

In denying the application the director noted the above, and made reference to the fact that the applicant previously stated that she did not attempt to apply for legalization until after July of 1988, two months after the legalization application period.

On appeal the applicant attempts to explain these contradictions. She resubmits her rebuttal to the director's NOID, resubmits the previously submitted letter from St. Frances de Chantal Church from

1991, resubmits the letter from [REDACTED], submits the same statement from [REDACTED] that now contains a photocopy of his Permanent Resident Card, submits the same statement from [REDACTED] that now shows a photocopy of his Permanent Resident Card and telephone number, and submits a new affidavit from [REDACTED]

The new affidavit from [REDACTED] states that [REDACTED] met the applicant at the end of 1981. She states that she frequently saw the applicant and provides the applicant's address during the requisite period as [REDACTED] Brooklyn, New York. Here, [REDACTED] does not offer evidence that she resided in the United States for the duration of the requisite period. She does not indicate that she met the applicant in the United States. She further fails to indicate whether there were periods of time during which she did not have contact with the applicant. Because of this, this statement can be afforded minimal weight in establishing that the applicant resided continuously in the United States for the duration of the requisite period.

All other documents have been previously noted as they were submitted prior to the applicant's appeal.

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 not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period, and has submitted attestations from individuals concerning that period that were found lacking. Though she submitted one (1) additional affidavit with her appeal, it alone was not sufficient to prove by a preponderance of the evidence that she resided continuously in the United States for the duration of the requisite period, particularly considering other inconsistencies in the record.

The regulation at 8 C.F.R. § 245a.2(d)(6) states that the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. Here, the evidence produced by the applicant is neither probative nor credible.

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 contradictory statements in evidence in the record 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.