



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

LI

OCT 12 2007

FILE:

MSC-06-075-10209

Office: NATIONAL BENEFITS CENTER

Date:

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. Wiemann", written over a horizontal line.

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 Director, National Benefits Center, Missouri 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 stated in his Notice of Intent to Deny (NOID) that the applicant failed to provide evidence that she was eligible to adjust to temporary resident status. The director granted the applicant thirty (30) days within which to submit additional evidence in support of her application. In denying her application, the director stated that though his office received evidence in support of her application in the form of an affidavit from [REDACTED], that affidavit was not sufficient to establish, by a preponderance of the evidence that the applicant had resided continuously in the United States for the duration of the requisite period. In saying this, the director noted that the applicant failed to submit proof that the affiant had direct personal knowledge of the events and circumstances of the applicant's residency. 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.

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 for class membership.

On appeal, the applicant asserts that J. [REDACTED] from whom she submitted an affidavit, is her sister. She further submits evidence that [REDACTED] was in the United States during the requisite period. In addition to this she submits a new affidavit and furnishes photographs 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 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).

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, 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 December 12, 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 [REDACTED] 993 to the time she submitted her Form I-687 in 2005. It is noted that the applicant showed no previous addresses in the United States. At part #32 where the applicant is asked to list all absences from the United States since entry, the applicant showed none. At part #33 where the applicant is asked to show employment in the United States, the applicant showed that she has never been employed in the United States

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 one (1) affidavit.

The affidavit from [REDACTED] states that the affiant has known the applicant since 1956. The affidavit goes on to say that around 1980, the applicant attempted to legalize his [sic] status through the amnesty program. It is noted here that the dates for this program were May 4, 1987 to May 4, 1988. The affiant provides a phone number at which she can be reached. Here, the affiant failed to explain the nature of her relationship with the applicant, and she failed to indicate whether the applicant entered the United States prior to January 1, 1982 or if she continuously resided in the United States at any time. Although not required, the affiant also failed to provide documentation of her identity or her residence in the United States during the statutory period. This affidavit is found to be insufficiently detailed to confirm the applicant's residence during the requisite period.

Truth is to be determined not by the quantity of evidence alone, but by its quality. The regulations specifically state that the evidence will be judged by its probative value and credibility. 8 C.F.R. § 245a.2(d)(6) (1988). Therefore, the application of the "preponderance of the evidence" standard may require the examination of each piece of relevant evidence and a determination as to whether such evidence, either by itself or when viewed within the totality of the evidence, establishes that something to be proved is probably true. *Matter of E- M--*, *supra*.

Affidavits that have been properly attested to under penalty of law may be given more weight than a simple letter. However in determining the weight of an affidavit, it should be examined first to determine upon what basis the affiant is making the statement and whether the statement is internally consistent, plausible, or even credible. Most important is whether the statement of the affiant is consistent with the other evidence in the record. *Matter of E- M--*, supra.

Here, the affiant stated that the applicant attempted to file for legalization on a date before the program to file for this benefit was established, which is not plausible. This casts doubt on the credibility of this affidavit.

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. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Thus, on the application, which the applicant signed under penalty of perjury, she showed that she resided in the United States since May 1993. The only evidence submitted with the application that is relevant to the 1981-88 period in question showed that the applicant applied for legalization on a date that was seven (7) years before the amnesty program was established.

In denying the application the director stated that he found the affidavit submitted by the applicant lacking, noted that she submitted documents that were not relevant to the requisite period and stated that pursuant to 8 C.F.R. § 245a.2(d)(5) the applicant bears the burden of establishing by a preponderance of the evidence that she has resided in the United States for the requisite periods. Here, the director found that the applicant failed to meet this burden.

It is noted that it has been held that while it is reasonable to expect an applicant who has been residing in this country since prior to January 1, 1982, to provide some documentation other than affidavits, the absence of contemporaneous documentation is not necessarily fatal to an applicant's claim to eligibility. Although the Service regulations provide an illustrative list of contemporaneous documents that an applicant can submit, the list also permits the submission of affidavits and "[a]ny other relevant document. If a legal conclusion of a director were to be made that an applicant could meet his burden of proof by his "own testimony and that of unsupported affidavit," this would be inconsistent with the both 8 C.F.R. § 245a.2(d)(3)(iv)(L) and *Matter of E- M--*, supra.

However, the affidavit submitted by this applicant was significantly lacking in detail and provided implausible testimony, which cast doubt on the credibility of this affidavit.

On appeal the applicant attempts to explain these contradictions. She states that [REDACTED] is her sister and submits the following in support of her appeal:

- A photocopy of [REDACTED]'s driver's license issued by the State of Texas.

- Proof that [REDACTED] had a bank account at Westside Bank in Texas from at least June of 1978 until July of 1980. This deposit book shows her address to be [REDACTED], S [REDACTED] at the time she held this account from 1978 to 1980.
- A statement from J. [REDACTED] in which she states that she entered the United States in 1972 and that the applicant lived with her from 1979 at [REDACTED] TX. It is noted that this address conflicts with that shown on [REDACTED] bank deposit book as her address from 1978 to 1980. Though this statement shows that that applicant lived with [REDACTED] in 1979, it does not state whether the applicant lived with [REDACTED] at any point in time during the requisite period. Further, it is noted that this information conflicts with what the applicant showed on her Form I-687, where she indicated that the only address she has ever had in the United States was in Detroit, Michigan and that she began residing there in 1993.
- A Naturalization Certificate for [REDACTED] showing she became a United States Citizen on September 11, 1997.
- Two (2) photographs. The first photograph shows two (2) women with a baby sitting near a parking lot with a palm tree in the background. This photograph is not dated. The second photograph shows six (6) people standing in a city. It is not clear when are where either of these photographs were taken or who is pictured in them. While it can be assumed that one of the women in each of the photographs is the applicant, it is not clear that these photographs were taken in the United States. Further, they alone do not establish that the applicant maintained continuous residence in the United States for the duration of the requisite period.
- A notarized statement and driver's license from [REDACTED] in Texas who states that she has known the applicant since 1979. Here, [REDACTED] does not clearly state the circumstances under which she met the applicant or whether she met her in the United States. The affiant failed to explain the nature of her relationship with the applicant. She further failed to indicate whether the applicant entered the United States prior to January 1, 1982 or if she continuously resided in the United States during the requisite period. Although not required, the affiant also failed to provide documentation of her residence in the United States during the statutory period. This affidavit is found to be insufficiently detailed to confirm the applicant's residence during the requisite period.

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 attestations from only two people concerning that period. She did not submit any additional evidence to establish that she had maintained continuous residence in the United States. Further, though the director did not note the discrepancy in his decision, the AAO finds that the applicant has not presented evidence that

would overcome the fact that she showed on her Form I-687 that she has only lived in Michigan since 1993 but has presented evidence showing that she lived in Texas in 1979.

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). The applicant submitted two (2) affidavits and two (2) photographs as corroborating evidence of her continuous residence during the requisite period to satisfy her burden of proof. However, for the reasons stated above, these documents were not found sufficient to satisfy this burden.

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 applicant's contradictory statements regarding her residence as shown on her application and within affidavits she submitted 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.