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FILE:

MSC 05 313 12361

Office: NEW YORK

Date:

APR 02 2008

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, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant submitted a Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (Act), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet. The director determined that the applicant had not established by a preponderance of the evidence that she had continuously resided in the United States in an unlawful status for the duration of the requisite period. The director discussed one of the affidavits submitted in support of the applicant's claim and determined that insufficient documentation was submitted to support the assertions made by the affiant. The director denied the application, finding that the applicant had not met her burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, the applicant asserts that the director's decision was erroneous and questioned the director's finding that an affiant failed to submit sufficient evidence of her residence in the United States during the time period attested to in her written testimony.

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). 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).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and 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 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. CSS Settlement Agreement paragraph 11 at page 6; Newman 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 period, 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, 431 (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 during the requisite time period. Here, the applicant has not met this burden. The record shows that in support of the Form I-687, the applicant initially provided two affidavits—one affidavit from ██████████, dated May 6, 2005, and another from ██████████ dated May 4, 2005. ██████████ stated that he met the applicant in April 1982 at a hair show. Ms. ██████████ stated that she met the applicant at a beauty salon in 1981 and has maintained a friendship with her since such time. Both affiants claimed that the applicant has continued to work in the beauty industry during the time that they've known her. Despite both affiants' claims that they had each been friends with the applicant in excess of 23 years, neither provided any details about the events and circumstances of the applicant's residence in the United States during the statutory period. As such, these statements can be afforded minimal weight as evidence of the applicant's residence in the United States for the duration of the requisite period.

The applicant subsequently submitted three additional affidavits from ██████████, a pastor at Our Lady of Victory R.C. Church, ██████████ and ██████████, and ██████████. Although ██████████, whose affidavit is dated February 24, 2006, stated that the applicant has been a member and participant of his church's religious services since the 1980s, he did not specify the year she first started the alleged attendance. As such, he did not claim to have known the applicant as of January 1, 1982 or prior to that date. Mr. and Mrs. ██████████ whose affidavit is dated February 22, 2006, claimed that the applicant became a patron of their business establishment approximately 22 years prior to the date of the affidavit. Similarly, ██████████, whose affidavit is dated February 21, 2006, also claimed that she first met the applicant in 1984, when the applicant started doing the affiant's nails. As such, neither ██████████ nor Mr. and Mrs. ██████████ claimed to know the applicant during the entire statutory period and cannot attest to the applicant's residence prior to 1984. Moreover, none of the affiants provided any details about the events or circumstances of the applicant's life during her residence in the United States. More

specifically, with regard to the claim made by [REDACTED], she failed to state the name of the beauty salon where the applicant purportedly worked when the affiant first met her.

On March 9, 2006, the director issued a notice of intent to deny the application (NOID). The AAO notes, that a number of the underlying findings regarding the evidence submitted were inaccurate and failed to stress the real shortcomings of the affiants' respective statements. Specifically, only [REDACTED] claimed to own the business where they purportedly met the applicant. Therefore, the director's finding that none of the affiants provided evidence that they owned or were employed at the respective businesses is irrelevant to the overall issue of their claimed acquaintances with the applicant. The director also noted that among other deficiencies, none of the affiants provided information as to where they met the applicant. However, a review of the evidence submitted suggests that this finding is also erroneous. While most of the affidavits contained very little verifiable information, the information that all the affiants did provide was the place and/or circumstances under which they each first became acquainted with the applicant. Lastly, the director improperly issued an adverse finding with regard to the applicant's failure to provide proof of her unlawful entry into the United States. It is unreasonable to expect the applicant to provide proof of entry to the United States in light of an applicant's claim that the entry itself was completed without inspection.

Notwithstanding the director's flawed analysis, the submitted affidavits lacked sufficient information to adequately support the applicant's claim. Therefore, the director properly determined that a NOID was warranted.

In response, the applicant submitted a letter dated April 3, 2006 in which she disputed the director's intent to deny. The applicant also provided two new affidavits and other supporting evidence. One affidavit was dated March 23, 2006 and was signed by [REDACTED] who stated that the applicant arrived in the United States in September 1981. [REDACTED] described the applicant's living arrangement from the time she arrived to the United States, claiming that the applicant lived at [REDACTED] until March 1985 at which time she moved to Astoria, New York. The affiant claimed that the woman who owned the residence eventually moved to Portugal and that at the time, or shortly thereafter, the affiant moved in and resided there with the applicant until the applicant's move to Astoria. The affiant further stated that she works in the beauty industry and claimed that she helped the applicant to learn various skills to enable her to work in the beauty industry as well.

The applicant also provided an affidavit dated March 28, 2006 from [REDACTED] who stated that she met the applicant in 1984 when the affiant was attending Beauty School Robert Fiance. [REDACTED] also stated that the applicant resided at [REDACTED] when the two first met. However, as many of the prior affiants, [REDACTED] did not claim to know the affiant prior to 1984. Therefore, this affiant's testimony cannot be used to support the applicant's claim of residence in the United States from the commencement of the statutory period until 1984.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period. While she has submitted a number of attestations from various affiants, only one of those affiants attested to the applicant's residence in the United States during the full

statutory time period. Lastly, while a number of the affiants provided statements that suggest the applicant has been employed in the beauty industry, the applicant's response to item No. 33 of her Form I-687 indicates that she has been self-employed as a housekeeper. 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). In the present matter, the applicant has provided no documentary evidence to show that she has been employed in the beauty industry as has been claimed by several of the affiants. This apparent inconsistency detracts from the credibility of all the affiants, including [REDACTED], who made claims with regard to the applicant's purported employment in the beauty industry.

The absence of sufficiently detailed 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 apparent contradiction between the applicant's claim regarding her employment and the claims of several of the affiants, as well as 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 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-*, 20 I&N Dec. 77. 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.