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U.S. Citizenship
and Immigration
Services

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FILE:

MSC 05 244 10152

Office: NEW YORK

Date: AUG 07 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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

A handwritten signature in black ink that reads "Robert P. 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, New York. The decision 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 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 she has established his unlawful residence for the requisite time period, that he is qualified under Section 245A of the Act and the CSS/NEWMAN settlement agreements, and that his application for temporary resident status should be granted.

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 245(a)(3) of the Act, 8 U.S.C. § 1255a(a)(3). The regulations clarify that the applicant must 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 physical presence under the CSS/Newman Settlement Agreements, the term "until the date of filing" in 8 C.F.R. § 245a.2(b)(1) means 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. 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.* at 80. 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 for the duration of the requisite period. Here, the applicant submitted the following documentary evidence:

Affidavits

- [REDACTED] submitted a sworn statement wherein she stated that she had known the applicant since 1980, that the two met in New York in church in 1980, and were friends. The affiant attests to the applicant’s good character, but provides no additional information.
- [REDACTED] submitted a notarized, but unsworn, statement wherein he stated that he had known the applicant for the last 25 years, and that the applicant “has remained an active part of our community.” The affiant does not state where he met the applicant or that she has continuously resided in the United States for the last 25 years. The affiant attests to the applicant’s good character, but provides no additional information.
- [REDACTED] submitted a sworn statement wherein he states that he has personally known the applicant since 1980 and has remained close friends with her since that time. The affiant attests to the applicant’s good character, but provides no additional information. The affiant does not state where he met the applicant, or that she has continuously resided in the United States since 1980.

- [REDACTED] submitted a notarized, but unsworn, witness statement wherein she states that she has known the applicant since July of 1982, when [REDACTED] first came to the United States and was helped by the applicant. The witness attests to the applicant's good character, but provides no additional information.
- [REDACTED] submitted a sworn statement wherein she states that she has known the applicant for 17 years. The affiant attests to the applicant's good character, but provides no additional information. The affiant does not state where she met the applicant, or that the applicant has continuously resided in the United States for the past 17 years.
- [REDACTED] submitted a notarized, but unsworn, statement wherein he states that he has known the applicant since 1988 when they were neighbors. The affiant states that he is the applicant's friend and attests to her good character. The affiant provides no additional information.

Applicant's Sworn Statements

- The applicant made a sworn statement to a United States immigration officer on March 6, 2006 during a legalization interview. During that interview, the applicant stated, in part, that she first entered the United States on Christmas Day in 1979, and that she departed the United States for one month to visit family in Canada in 1985.

The applicant submitted a sworn statement entitled "Amnesty Declaration" on May 18, 2005. In that statement, the applicant states that she entered the United States without inspection on December 25, 1979, and has resided continuously and unlawfully in this country since that time. She further states that she left this country for a one month period to visit family in Canada in 1985.

Unsworn Statements

- [REDACTED], D.D.S. submitted an unsworn statement on his office's letterhead on March 4, 2005 wherein he stated that he had treated the applicant for the past 25 years at various clinics and presently at his office. [REDACTED] does not indicate the frequency of his contact with the applicant, nor does he state the extent, if any, to which his statement is corroborated by dental records. [REDACTED] did not provide copies of medical records verifying treatment, but provided a note, on his prescription sheet, stating that under "HIPPA" medical information may not be disclosed. [REDACTED] attests to the applicant's good character, but provides no additional information.
- [REDACTED] provided an unsworn statement dated May 16, 2005 wherein he states that he has known and treated the applicant in his medical practice for at least the last 17 years. Dr. [REDACTED] does not indicate the frequency of the applicant's visits. The doctor provides no additional information.

Although the applicant has submitted several affidavits, unsworn statements, and her sworn statements in support of her application, the applicant has not established her continuous unlawful residence in the United States for the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. In the sworn and unsworn witness statements submitted, none of the declarants provided detailed evidence establishing how they knew the applicant, the details of their association or relationship, or detailed accounts of their ongoing association establishing a relationship under which the declarant could be reasonably expected to have personal knowledge of the applicant's residence, activities and whereabouts during the requisite period covered by the applicant's Form I-687. The witnesses state generally how they met the applicant, and that they had a social or casual relationship with her, or treated her as a patient. The affidavits contained only general statements of an ongoing relationship with the applicant without specific detail establishing the specifics of the relationship such as dates and/or places of contact, knowledge of life events experienced by the parties, or any documentation to corroborate the affiant's generalized statements. To be considered probative and credible, a witness statement must do more than simply state that the witness knows an applicant and that the applicant has lived in the United States for a specific time period. The witness' statement must be presented in sufficient detail to establish that a relationship does in fact exist, how the relationship was established and sustained, and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. 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 her 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. Further, as noted in 8 C.F.R. § 245a.2(d)(6), to meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony, and the sufficiency of all evidence will be judged according to its probative value and credibility. Given the applicant's reliance upon documents with minimal probative value, it is concluded that the affidavits and statement submitted fail to establish continuous residence in an unlawful status in the United States during the requisite period.

Employment Statement

- [REDACTED] submitted a notarized, but unsworn, statement on the letterhead of India Bazaar, Inc., dated August 27, 1991, wherein he stated that the applicant worked for his company in Flushing, NY from February of 1980 until December of 1989 as a cashier. The affiant states that the applicant was paid \$110.00 per week in cash for her labor. The affiant provides no additional information.

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable. The employment statement submitted by the applicant is of little probative value as

it fails to provide all information required by the above-cited regulation. The statement does not provide the applicant's address during employment, show periods of layoff (or state that there were none), declare whether the information attested to was taken from employment records, identify the location of any such records, or state whether the records are accessible, and if not, why not.

The evidence submitted by the applicant, and listed above, does not establish the applicant's presence in the United States for the requisite time period. Taken as a whole, the evidence submitted lacks sufficient detail to establish the applicant's continuous residence in this country for the requisite time period. 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 her claim. As previously stated, pursuant to 8 C.F.R. § 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 reliance upon documents with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States during the requisite period.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he has continuously resided in an unlawful status in the United States for the requisite period 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.