

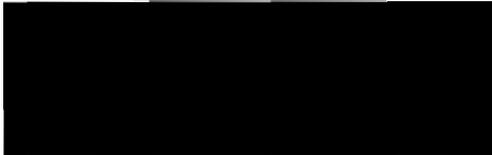


U.S. Citizenship
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FILE:



MSC 05 285 14001

Office: NEW YORK

Date:

AUG 26 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, appearing to read "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 matter is now before the Administrative Appeals Office 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 (the 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 during the requisite period. On appeal, the applicant asserted that the evidence is sufficient to show that she is eligible for the benefit sought.

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 (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 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant’s own testimony. 8 C.F.R. § 245a.2(d)(6).

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 applicant 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 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.

On the Form I-687 application, the applicant was required to list, at Item 30, all of her residences in the United States since her first entry. The applicant stated that she lived at [REDACTED], Bronx, New York, from August 1981 to July 1991.

The pertinent evidence in the record is described below.

- The record contains a two-year lease dated July 1, 1981. That lease purports to show that on that date the applicant contracted to rent [REDACTED], Bronx, New York. This office notes that this lease is consistent with the applicant’s claim to have lived at that address from August 1981 to July 1991. Standing alone, this lease would be accorded moderate credibility.
- The record contains an affidavit from [REDACTED], of Scarsdale, New York. Mr. [REDACTED] stated that he has known the applicant in the United States since 1982, and that before he moved to Scarsdale, the applicant lived with him at [REDACTED] Bronx, New York, from 1986 to 1990. This office notes that the applicant stated, on the Form I-687 application, that she lived at [REDACTED] during all of that period.

Because it conflicts with the applicant’s own report of her residential history, that affidavit will be accorded no evidentiary weight. Further, doubt cast on any aspect of the applicant’s proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application, and the applicant must resolve any inconsistencies in the record with competent, independent, objective evidence. Attempts to explain or reconcile such inconsistencies, absent competent objective evidence sufficient to demonstrate where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (Comm. 1988).

Not only does this conflict destroy the credibility of [REDACTED]'s affidavit, it casts doubt on the reliability of all of the applicant's assertions and reduces the evidentiary value of all of the other evidence in the record, in particular destroying the evidentiary value of the lease described above.

- The record contains an Apartment Seekers Specification Form dated July 15, 1981, from the office of [REDACTED] a licensed real estate broker in Bronx, New York. That form purports to have been submitted to that broker because the applicant was seeking an apartment on that date.

That form states that if the applicant rents an apartment located for her by the agent, that applicant will pay the “. . . standard locating fee equal to _____.” The words, “Silverman Real Estate” were entered in that blank on the form, rather than the fee for the service, as the form called for. This indicates to this office that the form was completed by someone without experience with that particular form, and without oversight by anyone familiar with the form. The form contains no indication that anyone but the applicant completed it. Further, the form provided is an original, rather than a photocopy. If the applicant completed that form and submitted it to a real estate company, then the applicant would not have subsequently found it in her records. That the applicant has possession of that form, in itself, suggests that it was not produced for its ostensible purpose, and that it is not contemporaneous evidence of the applicant's presence in the United States on July 15, 1981.

Further still, the applicant would not likely have been looking for an apartment on July 15, 1981, given that the lease submitted shows that she entered into a two-year lease on July 1, 1981. Even standing alone, that form would be accorded no evidentiary weight.

- The record contains an affidavit from the applicant, dated July 6, 2005. On that affidavit the applicant stated that she entered the United States in 1981. Even standing alone, that affidavit would be accorded very little evidentiary weight, as it was sworn to by the applicant herself. Further, the discrepancies between the applicant's assertions and evidence reduce the credibility of that affidavit so that it will be accorded no evidentiary weight.
- The record contains a CIS officer's notes from an interview of the applicant. The notes indicate that at that interview the applicant stated that she first entered the United States alone at the Kennedy Airport in New York during August 1981. This office notes that this assertion conflicts with the lease the applicant purportedly executed on July 1, 1981 and the Apartment Seekers Specification Form dated July 15, 1981. This statement by the applicant, pursuant to *Matter of Ho*, 19 I&N Dec. 582, reduces the credibility of the applicant's assertions and the evidentiary value of the applicant's evidence yet further.

The record contains no other evidence pertinent to the applicant's residence in the United States during the salient period.

With the application, the applicant submitted no evidence to support her claim of continuous residence in the United States during the requisite period. Therefore, on November 15, 2006, the National Benefits Center sent the applicant a Notice of Intent to Deny (NOID), stating that the application would be denied unless the applicant submitted sufficient evidence of her residence in the United States during the requisite period.

In response, the applicant submitted the affidavits and lease described above. The district director then issued another NOID, dated March 24, 2006. Citing the discrepancies in the record, the director stated that the applicant failed to submit evidence demonstrating her entry into the United States prior to January 1, 1982, and continuous residence during the requisite period. The director granted the applicant thirty days to submit additional evidence.

The applicant did not respond to that second NOID. In the Notice of Decision, dated April 21, 2006, the director found that the applicant had not overcome the basis for denial, and denied the application.

On appeal, the applicant asserted that she had submitted sufficient evidence of her eligibility, but did not otherwise address the basis of denial. The applicant submitted no additional evidence and did not address the discrepancies noted by the director.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate entry into the United States prior to January 1, 1982, and continuous residence during the requisite period.

Although the applicant submitted very little evidence, the evidence submitted, compared to the applicant's assertions, is ripe with discrepancies. Some of those discrepancies are listed below.

- The lease provided shows that the applicant entered into it on July 1, 1981. This conflicts with the Apartment Seekers Specification Form, which purports to show that the applicant was looking for an apartment to rent on July 15, 1981.
- Both the lease and the July 15, 1981 Apartment Seekers Specification Form conflict with the applicant's statement, as evidenced by an officer's notes taken at her interview, that she first entered the United States during August 1981.
- The statement of [REDACTED] that the applicant lived with him at [REDACTED] Bronx, New York, from 1986 to 1990 conflicts with the applicant's assertion, on the Form I-687 and elsewhere, that she lived at [REDACTED] Bronx, New York, from August 1981 to July 1991.
- The Apartment Seekers Specification Form, if it were an agreement between the applicant and a real estate professional as it purports to be, would have been retained by the real estate professional, and would not have been readily available to the applicant.

The applicant has never addressed the discrepancies in the record, let alone provided the independent objective evidence that would be necessary to reconcile them pursuant to *Matter of Ho*, 19 I&N Dec. 582. This destroys the credibility of the applicant's assertions and the evidentiary value of her evidence. The evidence submitted, therefore, is insufficient to demonstrate the applicant's continuous residence in the United States during the requisite period.

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 its amenability to verification. Given the paucity of credible supporting documentation the applicant has failed to meet her burden of proof and failed to establish continuous residence in an unlawful status in the United States during the requisite period. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis. The application was correctly denied on this basis, which has not been overcome on appeal. The appeal will be dismissed.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.