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U.S. Citizenship  
and Immigration  
Services

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**PUBLIC COPY**

[REDACTED]

FILE: MSC-05-182-10275

Office: LOS ANGELES

Date: **AUG 29 2008**

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:

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, Newark. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because she found that the evidence submitted with the application was insufficient to establish eligibility for Temporary Resident Status pursuant to the terms of the CSS/Newman settlement agreements. Specifically, the director found that information provided by the applicant in her testimony before an immigration officer conflicted with information contained in the affidavits submitted by the applicant in support of her application. The director also noted that two affiants, [REDACTED] and [REDACTED] provided conflicting information when contacted by telephone. Finally, the director noted that the applicant provided conflicting information on a previously submitted Form I-360 petition.

On appeal the applicant states that the director erred in finding that the applicant did not satisfy her burden of proof and disputes the alleged inconsistencies noted by the director. The applicant has submitted additional witness statements to resolve those alleged inconsistencies.

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 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) 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. See 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).

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 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 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 has not met her burden of proof.

Initially, it should be noted that at least some of the discrepancies noted by the director appear to be questionable or inaccurate. Specifically, the director indicated in her decision that two affiants, [REDACTED] had been contacted by telephone. The director stated that [REDACTED] had been contacted by telephone and that he stated that the applicant had resided in San Bernardino from 1981 to 1988. The director stated that this conflicted with applicant’s testimony. It is unclear wherein the supposed inconsistency lies in that the applicant, according to the information provided on her Form I-687 application, claimed to live in San Bernardino from 1981 to 1988. Further, the applicant has submitted an affidavit from [REDACTED] in which he states that he never received a telephone call from the Service regarding the applicant.

According to the director, [REDACTED] declared over the telephone that the applicant resided in Bloomington from 1980 until 1985. The director stated that this conflicted with the testimony provided by the applicant as well as with other evidence in the record. However, it is clear that the affidavit by [REDACTED] relates to [REDACTED], not to the applicant. Specifically, [REDACTED] states in the affidavit that [REDACTED] lived with him in Bloomington from 1980 until 1985. The applicant states that the affidavit by [REDACTED] was not intended to prove the applicant’s residence in the United States. Instead, it was submitted to show that [REDACTED] had resided in the United States during the requisite period. The applicant submitted a statement by [REDACTED] which is intended to prove the applicant’s residence. Given this, it seems unlikely that [REDACTED] would declare that the applicant lived with him in Bloomington from 1980 until 1985.

The director also noted that, on a Form I-360 petition filed by the applicant in December of 2003, the applicant indicated that her first entry into the United States was on July 4, 1984. According to the director, the applicant testified before an immigration officer on April 18, 2006 that the date of her first entry into the United States was on January 13, 1981. However, the Form I-360 petition does not specifically ask for the date of first entry into the United States. Instead, the Form I-360 only asks for the "date of arrival." On appeal, the applicant states that she was confused by the question on the Form I-360 petition and listed her second arrival on the Form I-360 petition, which was July 4, 1984. The applicant did not list a corresponding absence on her Form I-687 application, although she testified before the immigration officer that she departed the United States in June 1984 and was absent from the United States for approximately three weeks. Given the ambiguous wording on the Form I-360 petition, the different dates provided by the applicant are not necessarily inconsistent. However, the record also contains a handwritten statement filed by the applicant in support of her I-360 petition in which the applicant states that she came to the United States in 1982. In addition, the record a Form I-130 Petition for Alien Relative filed on behalf of the applicant in 1992 which lists the applicant's date of arrival as 1985. These inconsistencies detract from the credibility of the applicant's claim to have entered the United States in 1981.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on December 28, 2005. The information contained in the Form I-687 application conflicts with other evidence in the record including witness affidavits.

At part #30 of the Form I-687, where applicants were asked to list all residences in the United States since first entry, the applicant listed her residences as follows:

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The addresses provided by the applicant on her Form I-687 application conflict with addresses listed elsewhere in the record. For example, the record contains a copy of the Marriage Certificate of the applicant and [REDACTED] dated October 16, 1986 in which the applicant's address is listed as [REDACTED]. The record also contains a Form I-817 Application for Voluntary Departure filed by the applicant in May of 1999. The Form I-817 application asked the applicant to provide the address where she resided on May 5, 1988. In response to this question, the applicant indicated that her address was [REDACTED]. The applicant did not list this address on her Form I-687 application.

A number of documents in the record also list the applicant's residence as [REDACTED]

This address was not listed as a previous residence by the applicant on her Form I-687 application. Specifically, the record contains an identification card issued to the applicant by the state of California on June 6, 1988. The identification card lists the applicant's address as [REDACTED]. The record also contains a copy of a form I-817 signed by the applicant on May 6, 1990 in which she listed her address as [REDACTED].

Finally, the record contains a number of documents in which the applicant has listed her address as [REDACTED]. Although the applicant has indicated on her Form I-687 application that she resided at an address on [REDACTED] until 1985, the documents in the record indicate that the applicant resided at [REDACTED] beginning in 1991. Specifically, the record contains a Form I-697A change of address card submitted by the applicant in 1991 in which she lists her address as [REDACTED]. The record also contains a letter sent by the applicant to the Western Service Center on August 12, 1991 in which the applicant lists her address as [REDACTED] St.

These discrepancies in the applicant's previous residences are material inconsistencies which detract from the credibility of the applicant's claims.

The applicant also submitted affidavits and/or written statements from the following individuals:

[REDACTED]

Some of these affidavits contain conflicting information. For example, [REDACTED] stated in his affidavit that the applicant lived at his house at [REDACTED] in San Bernardino, CA during the requisite period. The affidavit of [REDACTED] also states that the applicant lived at [REDACTED] Street during the period of 1982 until 1988. However, [REDACTED] also stated in their affidavits that they resided at [REDACTED] Street during the requisite period, but they did not indicate that the applicant resided with them at this address. Instead, [REDACTED] stated in her affidavit that she knew that the applicant resided in the United States during the requisite period "because since she arrived to the United States we have had contact with her during all these years. We celebrate birthday parties, holydays [sic], and Christmas together." [REDACTED] "I know the applicant was living in the United States during 1982 and 1988 because [REDACTED] Arriaga came to visited [sic] us in San Bernardino." In addition, [REDACTED] stated in her affidavit that she and the applicant lived together at [REDACTED] Bernardino, CA. This address was not listed by the applicant on her Form I-687 application.

The record also contains written statements from [REDACTED] both dated March 9, 2005. The declarants both stated that they were living at [REDACTED] in San Bernardino when the applicant moved to the United States. However, they did not indicate that the applicant was also living at this address.

The record also contains a declaration from [REDACTED] dated March 9, 2005. The declarant states that she met the applicant in 1981. The declarant also states that she was working at Rogers as a packer at the time and that she and the applicant worked together. However, the applicant did not list any such employment on her Form I-687 application.

In summary, the applicant has not provided sufficient evidence in support of her claim of residence in the United States relating to the entire requisite period. The evidence must be evaluated not by its quantity but by its quality. *Matter of E-M, supra* at 80. 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 contradictory information 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 for the requisite period 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.