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FILE:

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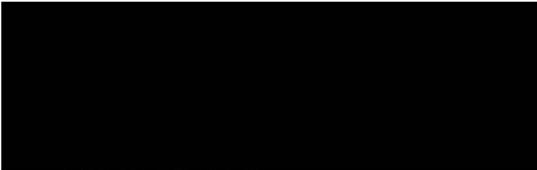
Date: DEC 08 2008

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:



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.

John F. Grissom, Acting 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 of the Houston office. 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 denied the application, finding 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.

On appeal, counsel made statements regarding the applicant's activities after the end of the requisite period, which are not directly relevant to the issue of whether she has established that she resided in the United States continuously throughout the requisite period. Counsel also indicated that the director had failed to indicate which witness United States Citizenship and Immigration Services (USCIS) had been able to contact. It is noted that the director indicated that the only individual whom USCIS had been able to contact was [REDACTED], who stated that she first met the applicant in 1989. Counsel also indicated that the applicant meets the residency requirements for temporary resident status. Counsel stated that the director failed to analyze the evidence presented by the applicant; failed to use due diligence to contact the witnesses; and erroneously denied the applicant due to the fact that the applicant's evidence was mainly affidavits.

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). 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 produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

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 (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. The documentation that the applicant submits in support of her claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of witness statements written by friends and family. The AAO has reviewed each document in its entirety to determine the applicant’s eligibility; however, the AAO will not quote each witness statement in this decision.

The affidavits from [REDACTED], and [REDACTED] all contain statements that the affiants have known the applicant or had knowledge of her activities only since 1989. The affidavit from [REDACTED] indicates that the affiant met the applicant in or about July 1988. Since these affiants failed to make any statements regarding the applicant’s residence in the United States during the requisite period, they will be given no weight in determining whether the applicant has established that she meets the residency requirements for temporary resident status.

The affidavits from [REDACTED], and [REDACTED] are nearly identical. They indicate that each affiant met the applicant in California in March 1981 at the applicant's aunt's house. They state that the applicant lived with her aunt until July 1989. They also state that the affiant and the applicant used to visit each other on a weekly basis since the affiant's parent and the applicant's aunt worked together in the fields. They state that the applicant calls the affiant to the present day and the affiant calls her back at least every other month "the present day." An immigration officer attempted to contact the three affiants on November 15, 2006. The officer was unable to reach [REDACTED] by phone because there was no answer, and the number provided by [REDACTED] was not a working number. The officer made contact with [REDACTED]. Ms. [REDACTED] stated that she had met the applicant in 1989. Considering that [REDACTED] affidavit states that she met the applicant in March 1981, the information obtained from her by the officer casts serious doubt on the credibility of her affidavit and on the applicant's claim to have resided in the United States throughout the requisite period.

Although the affidavits from [REDACTED] and [REDACTED] attest to the applicant residing in the United States during the required period, they fail to establish the applicant's 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; an applicant must provide evidence of eligibility apart from his or her own testimony; and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. None of the witness statements provide concrete information, specific to the applicant and generated by the asserted associations with her, which would reflect and corroborate the extent of those associations and demonstrate that they were a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the affidavits. To be considered probative and credible, witness affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Upon review, the AAO finds that, individually and together, these witness statements do not indicate that their assertions are probably true. Therefore, they have little probative value.

The affidavit from [REDACTED], the applicant's aunt, states that the applicant came to live with the affiant in or about March 1981 at her home in Porterville, California. The affiant stated that the applicant lived with her until approximately the end of July 1989. This affidavit lacks detail regarding when the affiant met the applicant, how the affiant is able to date the beginning of the applicant's residence with her, and whether the applicant was absent from the United States during the requisite period. Despite these limitations, this affidavit constitutes some limited evidence of the applicant's residence in the United States during the requisite period.

The affidavit from [REDACTED], from an unspecified date in 2005, states that the affiant met the applicant in about May 1981 through [REDACTED], whom the affiant worked for as a fruit picker in the California fields. The affiant stated that the applicant would come and help her aunt [REDACTED] with the fruit picking during spring and summer. The affiant stated that, to his knowledge, the

applicant has resided in the United States since May 1981. This affidavit is inconsistent with the information provided by the applicant on her Form I-687 Application for Temporary Resident Status, submitted on June 22, 2005. Specifically, the applicant failed to indicate that she had worked as a fruit picker on the Form I-687, when asked to list all employment. In addition, this affidavit lacks detail regarding the dates when the applicant worked in the fields, the affiant's frequency of contact with the applicant, and how he dates his acquaintance with her. Considering these limitations, this affidavit will be given only nominal weight.

The contradictory information in the affidavits presented and the oral witness statement are material to the applicant's claim in that they have a direct bearing on the applicant's residence in the United States during the requisite period. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. 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. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Although the director noted in the decision that [REDACTED] had stated to the officer that she did not meet the applicant until July 1989, and her affidavit indicated that she met the applicant in 1981, the applicant failed to provide independent, objective evidence to overcome this inconsistency on appeal. The evidence provided by the applicant is insufficient to overcome the inconsistencies in the record and establish by a preponderance of the evidence that she resided in the United States throughout the requisite period.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that she entered the United States before January 1, 1982 and 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.