

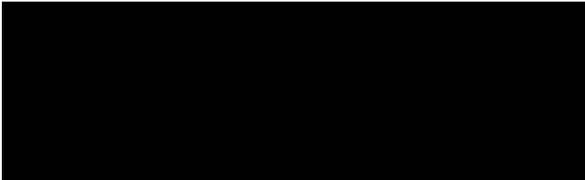
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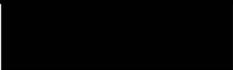
U.S. Citizenship
and Immigration
Services

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FILE:



MSC 05 127 10540

Office: LOS ANGELES

Date: DEC 11 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 "John F. Grissom".

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, Los Angeles. 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 on February 4, 2005. Upon review, the director determined that insufficient evidence had been presented to establish eligibility under section 245A of the Act. On March 7, 2006, the director issued a request for evidence (RFE). The applicant was asked to provide proof of residence in the United States since before 1982 through 1986, proof of the affiants' residences in the United States since before 1982-1986 and their phone numbers. In response, the applicant submitted two letters and an affidavit from persons who knew of her residence since 1981 until the present and their identification. The director denied the application, finding that the applicant had failed to establish by a preponderance of evidence that she was eligible for temporary residence status pursuant to section 245A of the Act.

On appeal, the applicant states that she submitted all the required proof to establish eligibility for legalization under the settlement agreements.

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.

At issue in this proceeding is whether the applicant submitted sufficient credible evidence to meet her burden of establishing that she (1) entered the United States before January 1, 1982 (2) has continuously resided in the United States in an unlawful status for the requisite period of time and (3) has continuous physical presence in the United States from November 6, 1986 through the requisite period. Here, the applicant has failed to meet this burden.

At part #30 of the Form I-687 application where the applicant was asked to list her places of residence in the United States she indicated that she resided in California from September 1981 to September 1990. She indicated at part #33 of his Form I-687 application that she is self-employed as a house cleaner but does not indicate who she worked for and the dates of her employment. The Form I-687 application at part #32 lists one absence from the United States for the applicant since her initial entry from August 1987 to August 1987.

In her interview conducted on March 7, 2006, the applicant claims she entered without inspection at San Ysidro in September 1981 and stayed with friends in Corona, California. During the interview, the applicant stated that she left the United States for the first time in August 1988 and reentered the United States on August 10, 1988. She then changed her answer to 1987. On appeal, the applicant

states she did not tell the interviewing officer that she departed from the United States for Mexico in 1988. The applicant offers no other evidence to substantiate her statement and does not explain how she reentered the United States in 1987 or 1988. The contradiction is material to the applicant's claim in that it has 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 petitioner 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).

In an attempt to establish entry into the United States before January 1, 1982, and continuous unlawful residence in the United States, the applicant provided letters from [REDACTED] and [REDACTED] and an affidavit from [REDACTED]

The letters from [REDACTED] and [REDACTED] and the sworn affidavit from [REDACTED] fail to attest to the applicant's illegal entry into the United States at San Ysidro in September 1981 and her continuous unlawful residence in the United States for the duration of the requisite period. [REDACTED] states that she has known the applicant personally since September 1981 and she was able to determine this fact and date due to her close relationship with the applicant's uncle. The writer gives different addresses where the applicant lived in California between September 1981 and present but fails to specify the frequency with which she saw and communicated with the applicant during the requisite period. She doesn't identify the uncle, state the circumstances surrounding their meeting, or give other details about their relationship. The writer fails to explain how she gained the personal knowledge of the applicant's continuous presence in the United States throughout the requisite period. The letter from [REDACTED] states only that the applicant is his cousin and has resided with him since 1997. The letter contains no other information relevant to the applicant's entry and continuous residence in the United States through the requisite period.

In the affidavit dated July 21, 2005 from [REDACTED], the affiant states that she has personal knowledge that the applicant resided in the United States from September 10, 1981. The affiant does not explain how they met and the frequency with which she saw and communicated with the applicant during the requisite period. The affidavit does not include sufficient detailed information about her relationship with the applicant and the applicant's unlawful entry and continuous residency in the United States since September 10, 1981. The affiant also fails to indicate any other details that would lend credence to her claimed acquaintance with the applicant and the applicant's residence in the United States during the requisite period. 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, the letters and the affidavit do not contain sufficient detail to establish the reliability of their assertions. Therefore, the letters and the affidavit have little probative value.

In the instant case, the applicant has failed to submit sufficient evidence to overcome the director's denial. The letters and the affidavit while providing some evidence of the applicant's presence in the United States are insufficient to establish the applicant's 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 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 also failed to establish that she has been continuously physically present in the United States since November 6, 1986. 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.