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U.S. Citizenship
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Services

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FILE:

MSC-06-076-10928

Office: MIAMI

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:

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, Miami. 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 noted that the affidavit submitted as evidence by the applicant did not appear to be credible or amenable to verification. The director also noted that the applicant had failed to respond to the Notice of Intent to Deny (NOID) dated January 24, 2007. 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 did respond to the NOID by hand delivering her documentation on February 16, 2007, to the appropriate USCIS office. Counsel asserts in the response to the NOID that the director's reasons for proposing to deny the application were an abuse of discretion, that the director used the wrong evidentiary standard in reviewing the evidence, and that the NOID lacked a basis for denial. Counsel stated that the affidavits submitted are credible and amenable to verification and that the record contains sufficient documentation to establish the applicant's eligibility for temporary resident status.

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).

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).

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 has submitted sufficient credible evidence to meet her burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687 Application and Supplement to United States Citizenship and Immigration Services (USCIS) on December 15, 2005. At part # 33 of the I-687 Application, the applicant indicated that she was self-employed in the United States from August of 2003 to October of 2005, and was employed by Century 21 Platinum real estate company from October of 2005 to December of 2005.

The applicant submitted the following attestation as evidence of her residence during the statutory period:

- An affidavit dated March 6, 2006 from [REDACTED] in which she stated that she has known the applicant since childhood in Guyana. She also stated that the applicant always talked of coming to America and that she entered the United States in 1981 when she was about 27 years old. The affiant stated that the applicant moved from New York to Florida in 2000 and that she and the applicant have always kept in touch with one another. The affiant seems to have resided in Canada during the statutory period. Here, the affiant fails to specify the frequency with which she saw the applicant during the requisite period. She also fails to indicate that her statement concerning the applicant's entry into the United States is based upon her first-hand knowledge of the applicant's whereabouts and circumstances during that time. The affiant fails to specify the applicant's place of residence in the United States or any other detail that would lend credence to her claimed knowledge of the applicant's residence during the requisite period. Because the affidavit is significantly lacking in detail, it can be afforded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

In denying the application the director noted that the evidence submitted by the applicant was not credible and was insufficient to overcome the grounds for denial stated in the NOID.

On appeal, the applicant reasserts her claim of eligibility for temporary resident status and submits the following attestations as evidence:

- An affidavit from [REDACTED] dated February 14, 2007 in which he stated that he has known the applicant since 1981 and that the applicant worked in his house as a cleaner and that she was later employed by him at his deli in New York City, as a part-time cashier. This statement is inconsistent with the applicant's statement on her Form I-687 application at part #33 where she didn't indicate that she was employed in the United States until August of 2003. This inconsistency calls into question the credibility of the affiant's statement. 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. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). In addition, the letter does not conform to regulatory standards for attestations by employers. Specifically, the affiant does not specify the address(es) where the applicant resided during the claimed employment periods, nor does he indicate whether the employment information was taken from company records. Neither has the availability of the company records for inspection been clarified. 8 C.F.R. § 245a.2(d)(3)(i). Because this affidavit is inconsistent with statements made by the applicant and because it does not conform to regulatory standards, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

- An affidavit from [REDACTED] in which she stated that she has known the applicant for many years and that they grew up together in Guyana. She also stated that she and the applicant lived together in Bronx, New York between 1982 and 1983. Here, the affiant fails to indicate the address where the applicant lived from 1982 to 1983. It is also noted that the affiant fails to specify the frequency with which she saw and communicated with the applicant after 1983. It is further noted that the affiant fails to indicate any knowledge of the applicant being present in the United States prior to 1982 or after 1983. Because the affidavit is lacking in detail, it can be afforded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

In the instant case, the applicant has failed to provide sufficient, probative evidence to establish her continuous unlawful residence in the United States since prior to January 1, 1982, and throughout the requisite period. She has failed to overcome the issues raised by the director. There is insufficient evidence in the record of proceeding to demonstrate the reliability of the declarations submitted. The employment affidavit is inconsistent with statements made by the applicant and it does not meet the regulatory criteria for such submissions, and the affidavits from [REDACTED] and [REDACTED] do not establish the applicant's residence in the United States throughout the requisite period.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, and the inconsistencies in the evidence discussed above 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 applicant's reliance upon documents that do not conform to regulatory standards for attestations by employers, and because other affidavits are lacking in 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.