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U.S. Citizenship
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FILE: MSC 05 216 11156 Office: LOS ANGELES Date: FEB 04 2008

IN RE: Applicant: [Redacted]

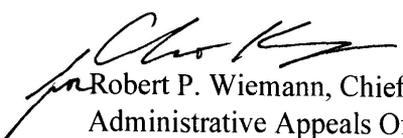
APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:



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, 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 May 4, 2005. 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 found that the applicant's testimony during her interview with a Citizenship and Immigration Services (CIS) officer was inconsistent with information provided in affidavits from third-party individuals. The director further observed that the applicant previously filed an application for Temporary Protected States in which she stated that she entered the United States in August 1987 and has resided here since that time. 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, counsel for the applicant alleges that the applicant's due process rights were violated by the CIS officer who interviewed her on March 7, 2006 because of the officer's aggressive behavior and "verbal mistreatment" of the applicant. The applicant submits a declaration in which she claims that she was not informed of the reason she was asked to appear at the Los Angeles District Office, and was thus not prepared for her interview. The applicant states that she felt intimidated during the interview and that she feels that she was not given the opportunity to respond correctly to the questions asked. Counsel requests that the applicant be given another opportunity to be interviewed.

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)(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).

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 has furnished sufficient credible evidence to demonstrate that he resided in the United States for the duration of the requisite period. Here, the submitted evidence is not sufficiently probative and credible.

The record shows that the applicant submitted a Form I-687 application and supplement to Citizenship and Immigration Services (CIS) on May 4, 2005. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant showed that she resided at [REDACTED] in Pasadena, California from 1981 until 1983; at [REDACTED] in Pasadena from 1983 to 1987; and at [REDACTED], in Palmdale, California from 1987 to 1989. At part #33, where applicants were asked to list all employment in the United States, the applicant stated that she was employed as a babysitter by [REDACTED] in Palmdale, California from 1981 until 1986, and as a babysitter for [REDACTED] at [REDACTED] in Palmdale from 1986 until 1990. At part #32, where applicants were asked to list all absences from the United States dating back to January 1, 1982, the applicant stated that she traveled to Honduras from September 10, 1985 to September 18, 1985; from June 1, 1986 until June 31 [sic], 1986, and from August 5, 1987 until August 25, 1987.

As noted above, the applicant has the burden of proving by a preponderance of the evidence that she has resided in the United States for the requisite period. 8 C.F.R. § 245a.2(d)(5). Pursuant to the regulation at 8 C.F.R. § 245a.2(d)(3) documentation an applicant may submit to establish proof of continuous residence in

the United States may include, but is not limited to: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts or letters. An applicant may also submit any other relevant document pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

Upon review of the record, it does not appear that the applicant submitted any evidence to establish her continuous residence in the United States for the duration of the requisite period in support of the instant application. The director's decision reflects that she reviewed two affidavits that were submitted by the applicant in support of a previous application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act in 2002 and are part of the record. The affidavits, which were executed by [REDACTED] and [REDACTED] on January 3, 2002, are essentially identical in content. Both affiants state that they have personally known the applicant in the United States, and that, to their knowledge, the applicant has resided in the United States from January 1981 until the present time. Both affiants state that the applicant has been a family friend and an asset to the community.

However, neither affiant provides any information as to how they date their initial acquaintance with the applicant; how, when, or under what circumstances they met the applicant; how frequently they saw the applicant during the requisite period; whether the affiants themselves resided in the United States during the requisite period; the specific addresses at which the applicant resided; or information regarding how they came to have direct, personal knowledge of the applicant's continuous residence in the United States. There is a significant lack of detail regarding the specific events and circumstances of the applicant's residence in the United States that diminishes the credibility of the affiants' claims of having a friendship with the applicant for 20 years. For these reasons, these affidavits have minimal probative value in supporting the applicant's claim of continuous residency in the United States during the requisite period.

During her interview with a CIS officer on March 7, 2006, the applicant stated under oath that she knew [REDACTED] in February 1982, and that he later married her friend who came to the United States in 1991. The applicant also testified that she first met [REDACTED] at church in February 1982. Thus, the applicant's own testimony was inconsistent with the information contained in the affidavits. For this additional reason, the affidavits of [REDACTED] and [REDACTED] are not credible. Further, it is noted that at part #31 of the Form I-687, where applicants were asked to list all affiliations or associations with churches and other organizations, the applicant indicated "None." Thus, the applicant's claim that she met [REDACTED] in church would appear to be inconsistent with her own statement on Form I-687 that she did not belong to a church. It must be emphasized, however, that the affidavits of [REDACTED] and [REDACTED], considered on their own merits apart from the applicant's testimony during her interview, fell significantly short of establishing by a preponderance of the evidence the applicant's continuous residence in the United States.

The applicant's administrative record also contains the following evidence submitted in support of the applicant's application for permanent residence under the LIFE Act and a previous Form I-687 application filed in 1990:

1. An affidavit from the applicant, dated July 26, 2004, in which she states that she entered the United States on January 1, 1981 at the age of 15 years old. She stated that she was living with relatives when she first arrived and thereafter did babysitting work to provide for herself financially. The applicant stated during her interview with a CIS officer on March 7, 2006 that she entered the United States without inspection on November 15, 1981. Although both dates are prior to January 1, 1982, the fact that the applicant provided two different specific dates for her initial date of entry to the United States undermines the credibility of her testimony.

2. A declaration of the applicant dated January 28, 2002, in which the applicant stated that she has lived in the United States since January 1981, except for trips to Honduras from September 10, 1985 until September 18, 1985, from June 1, 1986 until June 31 [sic], 1986, and from August 5, 1987 until August 25, 1987.

The applicant stated during her interview with a CIS officer on March 7, 2006, that she was married in Honduras on September 15, 1985, and that her first child was born in Honduras on June 19, 1986. This information is consistent with what the applicant indicated on her Form I-485 application filed in 2002. However, it is noted that on the applicant's previous Form I-687 filed in 1990, which she signed under penalty of perjury, the applicant indicated that she had no children and had never been married. She also indicated on the 1990 application only one trip outside the United States, a visit to Honduras in August 1987. 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. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the application. *Id.* at 591.

3. A letter dated June 15, 1990 from [REDACTED], who acknowledges his acquaintance with the applicant for "the last 6-7 years" and states the he is aware that the applicant earned a living by babysitting or housecleaning. Here, the affiant did not claim to know the applicant prior to 1983 or 1984, and was unable to date his initial acquaintance with her. He did not state how or where he met the applicant, under what circumstances they met, or how frequently he had contact with her during the requisite period. Further, the applicant did not indicate that he had personal knowledge of the address at which the applicant resided, or what his relationship with the applicant is other than "acquaintance." The letter is not notarized and it is not accompanied by proof of the affiant's identity or evidence that he resided in the United States during the requisite period. Because the statement is significantly lacking in detail, it can be given limited probative value in establishing the applicant's continuous residence in the United States, and no probative value in establishing that she was residing in the United States prior to 1984.

4. An affidavit executed by [REDACTED] on June 27, 1990, stating that the applicant worked for him providing housekeeping, babysitting and cooking services at his home located at [REDACTED] in Palmdale, California beginning in 1986.

5. An affidavit executed by [REDACTED], not dated, which states that the applicant worked for [REDACTED] from 1981 until 1986, providing housekeeping, babysitting and cooking services at her home located at [REDACTED].
6. An "affidavit of landlord" executed by [REDACTED] on June 27, 1990, which states that the applicant resided at [REDACTED] in Pasadena, California from 1983 until 1987.
7. An "affidavit of landlord" executed by [REDACTED] on June 27, 1990, which states that the applicant lived at [REDACTED] in Los Angeles, California from 1981 until 1983.

As noted in the director's decision, the applicant had difficulty recalling specific information regarding her residences during the requisite period at the time of her interview with the CIS officer on March 7, 2006. The record contains evidence that the applicant was interviewed on March 18, 2003 in connection with her application for permanent residence pursuant to the LIFE Act. At that time, she stated under oath that she resided "with [REDACTED] and helped her in her house from 1981 until 1986, and that she stayed with another family from 1986 until 1991, taking care of their children. These statements conflict with the affidavits from employers and landlords referenced above, which indicate that the applicant did not reside with her employers. Therefore, while the affidavits from landlords would appear to confirm the residences listed on applicant's Form I-687, the applicant's subsequent statements that she resided with her employers cast doubt on the affiants' testimony. Further, it is noted that the affidavits from the applicant's claimed landlords and employers are extremely general and provide no details that would lend credibility to the applicant's claim of continuous residence in the United States. None of the affiants provided proof of their identity or evidence that they in fact resided at the listed addresses during the requisite period.

Finally, as noted by the director, the record contains a copy of the applicant's Form I-821, Application for Temporary Protected Status, filed on July 2, 1999, and signed by the applicant under penalty of perjury. The applicant stated that she entered the United States on August 25, 1987 and has resided in the United States since that time. This information is inconsistent with the applicant's claim that she has continuously resided in the United States since 1981. Again, 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. *Matter of Ho*, 19 I&N Dec. at 591-92.

The director denied the application on March 11, 2006. In denying the application, the director noted the applicant's inconsistent testimony with respect to her date of entry to the United States in 1981, and noted that her testimony with respect to her relationship with the affiants [REDACTED] and [REDACTED] was inconsistent with the affiants' statements. The director also emphasized that the applicant stated on her application for Temporary Protected Status that she had resided in the United States since August 25, 1987, not since 1981, as claimed in the instant application. The director concluded that the applicant's evidence was not credible, and that she failed to establish her continuous residence in the United States for the duration of the requisite period.

On appeal, counsel for the applicant asserts that the applicant's due process rights were violated by the CIS officer who interviewed her, "because of her aggressive behavior and verbal mistreatment of the applicant." Counsel requests that the applicant's case be re-opened so that she can be re-interviewed.

In a separate statement, the applicant states that the appointment notice she received for her March 7, 2006 interview did not specify the reason for the appointment.¹ The applicant indicates that she believed that she was going to pick up a previous decision on an interview she had in August 15, 2005 in connection with her LIFE Act application.² The applicant states that when she learned that she was going to be interviewed, she advised the CIS officer that she was not ready and requested that she be given a new appointment, but was not permitted to leave. The applicant describes the CIS officer's questioning as intimidating and overly aggressive. The applicant states that she does not believe that the officer gave her the opportunity to respond correctly to the questions.

Upon review, the applicant has not established by a preponderance of the evidence that she resided continuously in the United States in an unlawful status for the duration of the requisite period.

While it appears that the applicant was poorly prepared for her interview with on March 7, 2006, the reasons provided for her lack of preparation are not credible. The record shows that the appointment notice she received gave her notice of the reason for the appointment. The AAO acknowledges counsel's allegation that the applicant's rights to due process were violated. This claim appears to be based on counsel's perception that CIS did not conduct the applicant's interview in a fair manner. Upon review, the applicant has not shown that any violation of the regulations resulted in "substantial prejudice" to her. *See De Zavala v. Ashcroft*, 385 F.3d 879, 883 (5th Cir. 2004) (holding that an alien "must make an initial showing of substantial prejudice" to prevail on a due process challenge). The applicant has fallen far short of meeting this standard. A review of the record and the adverse decision indicates that the director properly applied the regulations to the applicant's case.

As discussed further below, the reason for the denial of the application was not based solely, or even primarily, on the testimony given by the applicant during her interview. In addition, the AAO conducts a de novo review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(d)(6). All relevant evidence in the applicant's record, and the credibility and sufficiency of each piece of evidence, has been discussed herein. The applicant has not met her burden of proof and the denial was the proper result under the regulations. Accordingly, the applicant's claim is without merit.

¹ It is noted that the interview notice issued on February 22, 2006 indicates that the reason for the appointment is "Application for Status as Temporary Resident." An attachment to the interview notice is labeled "I-687 Interview" and provides a detailed list of items to bring to the interview.

² The applicant's application for permanent residence under the LIFE Act program was denied on August 12, 2004. The record shows that she was scheduled to appear for an interview with a CIS officer regarding the instant application for temporary resident status on August 15, 2005, but she did not appear for that interview and was thus rescheduled for an interview on March 7, 2006.

Neither the applicant nor counsel have made any substantive arguments regarding the applicant's eligibility for the benefit sought on appeal, nor have they addressed the specific deficiencies addressed in the director's decision. Notably, the applicant has not acknowledged, much less attempted to resolve, the fact that she indicated on her Form I-821, Application for Temporary Protected Status, that she had resided in the United States only since August 25, 1987. This statement is clearly inconsistent with her statements on her Form I-687 that she has been residing in the United States since 1981. As the applicant has provided two different accounts of her period of residence in the United States, and has made no attempt to resolve this inconsistency, she has seriously undermined the credibility of her testimony. Again, 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. *Matter of Ho*, 19 I&N Dec. at 591-92. Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the application. *Id.* at 591. This inconsistency alone would provide sufficient grounds for the denial of the instant application.

In addition, the applicant's previous statement that she was unmarried with no children as of 1990, when other evidence in the record indicates that she was married in 1985 and has a child born in 1986, also casts doubts on the credibility of the applicant's testimony and evidence.

Moreover, the evidence the applicant has submitted to demonstrate that she resided in the United States for the requisite period is not sufficiently probative and credible. The applicant has not provided any evidence of residence in the United States for the duration of the requisite period or of entry to the United States before January 1, 1982 except for her own assertions and the statements and affidavits noted above. The statements and affidavits lack credibility and probative value for the reasons noted. All of these deficiencies, and not simply the applicant's testimony during her interview, lead the AAO to conclude that the applicant has not established by a preponderance of the evidence that she is eligible for the benefit sought.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the duration of the requisite period, as well as the inconsistencies and contradictions noted in the record, seriously detract from the credibility of the applicant's 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 inconsistencies in the record and the lack of credible supporting documentation, it is concluded that she has failed to establish by a preponderance of the evidence that she has 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.