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FILE:

MSC-06-026-31305

Office: LOS ANGELES

Date:

FEB 06 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. 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. Wieman, 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 applicant appealed the decision to the Administrative Appeals Office (AAO). The AAO determined that the appeal was untimely filed and rejected the appeal. The applicant provided additional evidence to show that the appeal was timely filed. The AAO will now reopen the decision *sua sponte*. 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 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. Although the director raised the issue of class membership in the decision, she adjudicated the Form I-687 application on the merits. As a result, the director is found not to have denied the application for class membership.

On appeal, counsel for the applicant asserted that the applicant's trip outside of the United States in 1986 does not make her ineligible for class membership and does not make her ineligible 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)(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).

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

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on October 27, 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 listed the following addresses during the requisite period: [REDACTED] Loma Linda, California from October 1981 to August 1986; and [REDACTED] Los Angeles, California from October 1986 to May 1993. At part #31 where applicants were asked to list all affiliations or associations, clubs, organizations, churches, unions, businesses, etc., the applicant stated, “none.” At part #32 where applicants were asked to list all absences from the United States since entry, the applicant listed only the following absence during the requisite period: A trip to the Philippines to get married from August 1986 to October 1986. According to 8 C.F.R. § 245a.2(h)(1)(i), an applicant for temporary resident status shall be regarded as having resided continuously in the United States if, at the time of filing of the application, no

single absence from the United States has exceeded 45 days, and the aggregate of all absences has not exceeded 180 days between January 1, 1982 through the date the application for temporary resident status is filed, unless the applicant can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed. Since the applicant's visit only spanned one complete month – the month of September – it did not clearly exceed 45 days. Therefore, the applicant's statement on her Form I-687 application regarding this visit does not clearly indicate that she failed to maintain continuous residence during the requisite period. At part #33 where applicants were asked to list all employment in the United States since entry, the applicant listed the following positions during the requisite period: Caregiver for [REDACTED] at [REDACTED], Riverside, California from February 1982 to August 1986; and caregiver for [REDACTED] at [REDACTED] Palos Verdes, California from November 1986 to October 1993.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided multiple attestations relating to the requisite period. The applicant provided a form affidavit from [REDACTED] in which the affiant stated that the applicant resided and maintained residence at the [REDACTED] address from October 1986 until May 1993. [REDACTED] stated that the applicant was his tenant and rented a room from him. This affidavit provides no detail regarding how the affiant was able to date the period when the applicant rented a room from him, how much she paid him for rent, whether he has any records of the six years she rented a room from him, and whether CIS may have access to the records. As a result, this affidavit is found to lack sufficient detail to confirm the applicant resided in the United States throughout the requisite period.

The applicant also provided a form affidavit from [REDACTED] in which the affiant stated that the applicant resided and maintained residence at the [REDACTED] address from October 1981 until August 1986. The affidavit states that the applicant is the affiant's niece. This affidavit provides no detail regarding whether the affiant was in the United States during the time period for which he confirms the applicant's residence, the affiant's frequency of contact with the applicant during that period, and how the affiant is able to recall the precise dates of the period of residence. As a result, this affidavit is found to lack sufficient detail to confirm the applicant resided in the United States throughout the requisite period.

The applicant provided a form affidavit from [REDACTED] in which the affiant stated that he has personally known and been acquainted in the United States with the applicant. The affiant stated that the applicant resided at [REDACTED] Loma Linda, California from October 1981 to August 1986; and at the [REDACTED] address from October 1986 to May 1993. This information is inconsistent with the applicant's Form I-687 where she indicated she lived at [REDACTED] instead of at [REDACTED] from October 1981 to August 1986. Where the form indicates the affiant should state the facts from which he is able to determine the date of the beginning of his acquaintance with the applicant, the affiant stated, "She is a member of my congregation." This is inconsistent with the information provided on the applicant's Form I-687, where the applicant failed to list any church, synagogue or other similar organization

when asked to list all affiliations or associations. These inconsistencies call into question Mr. [REDACTED] ability to confirm the applicant's residence during the requisite period.

The applicant submitted a form affidavit from [REDACTED] in which the affiant stated that the applicant lived at the [REDACTED] address from October 1986 to May 1993. Where the form indicates the affiant should state the facts from which she is able to determine the date of the beginning of her acquaintance with the applicant, the affiant stated, "[The applicant] is live in caregiver of my cousin and friend of mine." This is inconsistent with the information provided by the applicant on Form I-687. The addresses listed on Form I-687 for the applicant's residences during the requisite period do not match any of the addresses listed for the applicant's places of employment during the requisite period. The affidavit indicates the affiant knew the date of her acquaintance with the applicant because of the applicant's role as "live in caregiver" for the affiant's friend, yet the applicant failed to list employment on her Form I-687 as live-in caregiver prior to or during the requisite period. The inconsistency between this statement and the information on the Form I-687 calls into question the affiant's explanation of her knowledge of the applicant and, as a result, calls into question her ability to confirm the applicant's residence during the requisite period.

Lastly, the applicant provided a form affidavit from [REDACTED] in which the affiant confirmed that the applicant resided at the [REDACTED] address from October 1986 to May 1993. The affiant also explained that the applicant is the affiant's best friend. This affidavit only confirms the applicant's residence in the United States from October 1986 until the end of the requisite period.

In denying the application the director noted 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 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.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the requisite period, and has submitted affidavits that lack sufficient detail, are inconsistent with the information provided in the applicant's Form I-687, or do not confirm that she resided in the United States throughout the requisite period. The affidavits from [REDACTED] and [REDACTED] lack sufficient detail. The affidavits from [REDACTED] and [REDACTED] are inconsistent with the Form I-687 application. The affidavit from [REDACTED] only confirms the applicant's residence in the United States from October 1986 until the end of the requisite period.

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 contradictions between the applicant's statements on her application and the documents she submitted, and given her 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.