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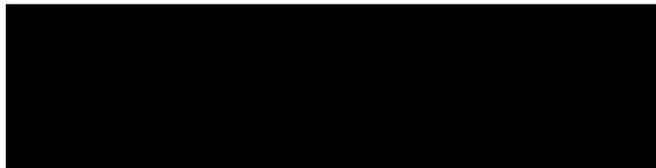


FILE: [Redacted]
MSC-05-204-14369

Office: LOS ANGELES

Date: FEB 25 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:

SELF-REPRESENTED

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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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. 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 under Section 245A of the Act.

On appeal, the applicant addresses the discrepancies in her application and testimony. The applicant also furnishes additional documentation to corroborate her residence in the United States during the requisite period.

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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his or 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 Citizenship and Immigration Services (CIS) on April 22, 2005. The applicant signed this application under penalty of perjury, certifying that the information is true and correct. At part #30 of the application where applicants are asked to list all residences in the United States since first entry, the applicant reported her first address in the United States to be Maywood, California from 1981 until 1992. At part #32 of the application, where applicants are asked to list all of their absences from the United States dating back to January 1, 1982, the applicant reported that she resided in Mexico from November 1968 until November 2000. The immigration officer amended this part of the application during the interview and noted that the applicant was absent from the United States on three occasions: December 1986 until January 1987; January 2006 until February 2006; and December 2005 until January 2006. At part #33 of the application where applicants are asked to list their employment history dating back to January 1, 1982, the applicant reported her only place of employment as Winshels Donuts House in Santa Ana, California from 2000 until 2005. The immigration officer noted during the interview that the applicant stated she was employed as a babysitter prior to this employment.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided several documents. The applicant submitted seven original W-2 Forms for the year 1986. These forms are issued by Salinas Valley Labor Contractors, Inc., located in Gonzales, California, to the following employees:

_____ and _____

_____ The applicant has failed to explain the relevance of these documents to her claim.

The applicant also submitted her birth certificate and her W-2 Forms with tax returns for the years 2000 through 2004. Since the issue here is the applicant's residence in the United States during the requisite period, these documents are not relevant to this proceeding.

One notable document submitted with the applicant's Form I-687 is entitled, *Information and Worksheet for Immigration Cases*. The applicant completed the worksheet and signed it as a "client." This worksheet requests the applicant to list all of her addresses "present to year 1981." The applicant listed only one address in Bell Gardens, California from 2000 until 2005. The worksheet also requests the applicant to list all of her employment in the United States. The applicant provided the name of one employer, Winchels Donuts House in Santa Ana, California from 2000 until 2005. The information contained in this worksheet is similar to the information the applicant initially provided on her application. As noted, the applicant stated on her application that she resided in Mexico from her date of birth, November 1968, until November 2000. Similarly, the applicant failed to provide any specific employment information on her application prior to the year 2000. These discrepancies draw into question the overall credibility of the applicant's claim of continuous residence in the United States during the requisite period.

The applicant also submitted four affidavits to corroborate her residence in the United States, two of which are relevant to this proceeding. The affidavits from _____ and _____ are not relevant because the affiants claim that they first met the applicant in 1996, which is outside the requisite time period. However, the other two affidavits from _____ and _____ are relevant because the affiants claim to have first met the applicant at some point during the requisite time period.

The affidavit from _____ states, "I got acquainted with _____ in 1987. We met at our job and grew a very close friendship with each other. We worked together from 1987 thru [sic] 1992 cleaning houses and she also helped me in my own business when I cleaned houses as an independent contractor." The affidavit provides some detail on the affiant's relationship with the applicant since the year 1987. However, the affiant's assertion that she met the applicant during her position as a house cleaner is inconsistent with the applicant's Form I-687 and the above mentioned worksheet. The applicant listed on these documents her first place of employment as Winchels Donuts House from 2000 until 2005. The immigration officer noted during the interview that the applicant stated she was employed as a babysitter prior to this employment. Based on these inconsistencies, this affidavit is not credible and probative evidence of the applicant's residence in the United States during the requisite period.

The affidavit from [REDACTED] states, "I met [REDACTED] and her family in 1983. They stayed with me and my family periodically from 1985 to 1986. We became really good friends and I remember that in 1993 she had nowhere to live . . . At this time I offered her my house . . ." This affidavit lacks considerable detail on the affiant's first meeting with the applicant. Therefore, it is unknown whether the affiant first met the applicant in the United States or in a foreign country. Hence, this affidavit is of minimal weight as probative evidence of the applicant's residence in the United States during the requisite period.

The director denied the application for temporary residence on June 3, 2006. In denying the application, the director noted that the applicant testified she has known [REDACTED] since 1985, which is inconsistent with [REDACTED]'s affidavit. The director also noted that the applicant's Form I-687 indicates she resided in Mexico from 1968 until 2000. The director further noted that the worksheet from the applicant's preparer indicates her first residence in the United States as starting in 2000. The director determined that the applicant failed to establish her claim of continuous unlawful residence in the United States during the requisite period. The director concluded that the applicant is not eligible for status as a temporary resident under Section 245A of the Act.

On appeal, the applicant asserts that she misunderstood the immigration officer during her interview. The applicant claims that she thought the immigration officer was asking her about [REDACTED] instead of [REDACTED]. The applicant explains that she has lived in different addresses since 1981 and it was impossible for her to keep all of the evidence that she had. The applicant further explains that the preparer of her application did not complete it with accuracy. The applicant cites to the regulations at 8 C.F.R. § 210(b)(3)(B), which she claims "allows the Service in its discretion to reopen the process or reconsider an adverse decision on special procedure cases . . ." Lastly, the applicant asserts that she has furnished affidavits from persons who have knowledge of her residence in the United States since 1981.

The regulations at 8 C.F.R. § 210 are the provisions for applications for temporary resident status as a special agricultural worker. The instant case relates to the legalization provisions under 8 C.F.R. § 245a for applications for temporary resident status under section 245A of the Act. Therefore, the applicant erroneously cited to 8 C.F.R. § 210 in her appeal of the director's denial.

The applicant's explanation that she misunderstood the immigration officer's question is irrelevant since, as noted, [REDACTED]'s affidavit is not credible evidence of her residence in the United States. Additionally, the applicant's explanation that the preparer of her application failed to complete it with accuracy fails to explain her client signature on the *Information and Worksheet for Immigration Cases*. The applicant states on this worksheet that her first address in the United States was in the year 2000.

The applicant resubmitted copies of the 1986 W-2 Forms issued by Salinas Valley Labor Contractors, Inc., without an explanation of the relevance of these documents to her claim. The applicant also resubmits her W-2 Forms and tax returns for the years 2000 through 2004. Again,

these documents are not relevant to this proceeding since the issue here is the applicant's residence in the United States during the requisite period.

The applicant also furnished affidavits as corroborating evidence of her residency in the United States during the requisite period. The applicant resubmitted the affidavits of [REDACTED]. The applicant submitted additional affidavits from [REDACTED] and [REDACTED]. The affidavits from [REDACTED] and [REDACTED] are not relevant to this proceeding because the affiants claim that they respectively first met the applicant in 1996 and 1988, which are dates outside the requisite time period.

The affidavit from [REDACTED] states, "I meet [REDACTED] and her family since 1984. I met her in a family reunion and we had an instant connection as friends. I continue having an extensive friendship with her . . ." This affidavit lacks considerable detail on the affiant's first meeting with the applicant. The affiant fails to provide the location of the affiant's first meeting with the applicant. Therefore, it is unknown whether the affiant first met the applicant in the United States or in a foreign country. Hence, this affidavit is of minimal weight as probative evidence of the applicant's residence in the United States during the requisite period.

The affidavit from [REDACTED] states, "Ms. [REDACTED] and her family lived with me from 1981 till about the beginning of 1993. [REDACTED] and her entire family hold a very strong friendship with me even till today." Mr. [REDACTED] provides his address as [REDACTED] Maywood, California. This address is corroborated with a copy of [REDACTED]'s driver's license that is attached to his affidavit. At part #30 of the Form I-687, the applicant has listed this address as her first address in the United States. The applicant claims that she resided at this address from 1981 until 1992. Therefore, this affidavit from [REDACTED] has some weight as probative evidence of the applicant's residence in the United States during the requisite period.

An applicant for temporary resident status has the burden of proving by a preponderance of the evidence that he has resided in the United States for the requisite periods. *See* 8 C.F.R. § 245a.2(d)(5). 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). The application of the "preponderance of the evidence" standard may require an examination of each piece of relevant evidence and a determination as to whether such evidence, either by itself or when viewed within the totality of the evidence, establishes that something to be proved is probably true. *Matter of E-M-*, 20 I&N Dec. 77, 80.

In determining the weight of a affidavit, it should be examined first to determine upon what basis the author is making the statement and whether the statement is internally consistent, plausible, or even credible. *Matter of E-M-*, 20 I&N Dec. at 81. Most important is whether the statement of the affiant is consistent with the other evidence in the record. *Id.* As noted, the majority of the affidavits in the applicant's record are either irrelevant to the proceeding or not credible. The applicant submitted one affidavit that carries some weight as probative corroborating evidence of

her residence in the United States during the requisite period. This affidavit, from [REDACTED] purports to corroborate the applicant's claim of residence at [REDACTED] Maywood, California. The affiant's complete statement is as follows:

[REDACTED] and her family lived with me from 1981 till about the beginning of 1993. Hilda and her entire family hold a very strong friendship with me even till today. During the many years that we lived together, this family had always been a caring, nice, generous, loving family who never took each other for granted.

The question in this proceeding is whether this affidavit alone establishes that the applicant's claim is probably true under the preponderance of the evidence standard. While this affidavit is internally consistent with the applicant's Form I-687, it does not alone establish that the applicant's claim is probably true. The affiant has not established that he has resided at his address in Maywood, California since 1981. The affiant's statement would have carried more weight if he had provided some documentation of his residence at this address during the requisite period. While not required, the affiant has not provided a phone number, which could be used to contact him and verify the contents of his affidavit. Finally, the affiant has failed to provide detailed information on how he first met the applicant and their living arrangement during the twelve years she purportedly lived with him. For these reasons, this affidavit does not alone establish that the applicant's claim is probably true, pursuant to *Matter of E-M-, supra*.

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