



U.S. Citizenship
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Services

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FILE: [Redacted]
MSC 06 031 12165

Office: NATIONAL BENEFITS CENTER

Date: JAN 28 2008

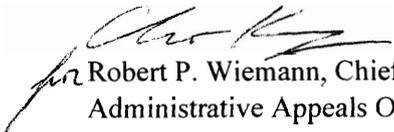
IN RE: Applicant: [Redacted]

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.


for 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 Director, National Benefits Center. 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 October 31, 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. In denying the application, the director observed that the applicant had not furnished any documentation that would support her claim, as the minimal evidence submitted was dated subsequent to 1998. The director denied the application as 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 states that she inadvertently provided insufficient information on her application. She provides additional evidence for consideration.

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).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), “until the date of filing” shall mean 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 periods, 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 applicant 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 a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to Citizenship and Immigration Services (CIS) on October 31, 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 stated that she resided at [REDACTED] in Los Angeles, California from November 1981 until July 1995. At part #33, where applicants are asked to list all employment in the United States, the applicant stated that she was self-employed at this address for the same dates.

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). To meet her burden of proof, an applicant must provide evidence of eligibility apart from her own testimony. 8 C.F.R. § 245a.2(d)(6). The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that an applicant may submit to establish proof of continuous residence in the United States during the requisite period. This list includes: 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).

The applicant did not submit documentary evidence in support of her claim of continuous residence in the United States in an unlawful status during the requisite period. Accordingly, on November 28, 2005, the director, National Benefits Center, issued a notice of intent to deny the application, giving the applicant 30 days in which to submit additional evidence.

In response to the notice of intent to deny, the applicant submitted the following documents:

1. An affidavit from [REDACTED], dated December 4, 2005. [REDACTED] states that he met the applicant "6 years ago," through her husband, and attests to her good moral character.
2. A letter from [REDACTED] Pastor of Our Lady of Lourdes Church in Northridge, California. He states that the applicant has been a parishioner of the parish since 1998 and that the applicant is well-known to him due to her involvement with the church.

Here, neither affiant claims to have known the applicant in the United States during the requisite period, therefore, the testimony of [REDACTED]s and [REDACTED] is irrelevant to this proceeding and can be given no evidentiary weight. Prior to the adjudication of the application, the applicant offered no evidence of her eligibility apart from her own testimony.

Accordingly, the director denied the application on July 21, 2006. In denying the application, the director observed that the applicant had failed to submit credible documents or tangible evidence that would establish by a preponderance of the evidence that she continuously resided in the United States in an unlawful status for the duration of the requisite period.

On appeal, the applicant states that she inadvertently provided insufficient information in support of her application. She asks that Citizenship and Immigration Services (CIS) consider the following new evidence:

1. An affidavit from [REDACTED] a resident of Northridge, California, who states that she has known the applicant as a good friend since 1981. [REDACTED] states that she met the applicant at a food fair in Los Angeles, and at that time, invited her to attend prayer meetings held at her house on Thursday evenings. She states that in addition to attending prayer meetings, the applicant visited her some evenings after work and spent some holidays with her. Finally, [REDACTED] states that she resumed her friendship with the applicant in May 1997 when she saw her at the Northridge Mall. [REDACTED] provides a copy of her California driver license as proof of her identity. While the affiant attests to meeting the applicant in the United States prior to January 1, 1982, and implies that she saw her on a weekly basis thereafter, she does not state whether she had contact with the applicant throughout the requisite period. Rather, it is implied that there was a length of time during which she had no contact with the applicant, but no information is given as to when her contact with the applicant ended. The statement lacks any details regarding the events and circumstances of the applicant's residence that would lend credibility to an alleged 25-year relationship with the applicant. [REDACTED] also does not state that she has direct personal knowledge of the applicant's address of residence throughout the relevant period. Because of the lack of relevant details, this affidavit can be afforded minimal weight as evidence of the applicant's continuous residence and physical presence in the United States during the requisite periods.

2. An affidavit from [REDACTED], a resident of Bronx, New York, who states that he has known the applicant as a friend for 25 years. He states that he first met the applicant in the United States in June 1982 at a party in the Bronx, and that he had previously known her in Ghana. [REDACTED] provides a copy of his U.S. Certificate of Naturalization as proof of his identity. [REDACTED] provides no information regarding the applicant's address of residence during the requisite period nor does he specify how frequently or under what circumstances he had contact with the applicant during this period. The affiant also provides no information or evidence regarding his place of residence during the requisite period. He currently resides in New York, claims to have met the applicant in New York in 1982, and lived in New York at the time he became a naturalized U.S. citizen in 1999. The applicant claims to have resided continuously in southern California, thus raising questions as to the frequency of her contacts with the affiant. The affiant offers little information beyond stating that he met the applicant in 1982. The lack of detail is significant considering that he claims to have been a good friend of the applicant for 25 years. The statement is too vague to establish that the affiant actually has personal knowledge of the information to which he is attesting. Accordingly, [REDACTED]'s affidavit can be given minimal weight in establishing the applicant's continuous residence.

As is stated above, 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. at 79-80. The applicant has been given the opportunity to satisfy her burden of proof with a broad range of evidence pursuant to 8 C.F.R. § 245a.2(d)(3). However, this applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period, and has submitted attestations from only two (2) affiants concerning that period, neither of which can be given more than minimal probative value. As noted by the director, the remaining two affidavits previously submitted are irrelevant because it has not been established that the affiants knew the applicant prior to 1998 or 1999. These affidavits are not sufficient to satisfy the applicant's burden of proof.

The absence of sufficiently detailed 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 applicant's 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 from prior to January 1, 1982 through the date she attempted to file a Form I-687 application 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.