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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
MSC-05-215-10898

Office: LOS ANGELES

Date: JUL 01 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. 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.

Robert P. Wienmann, 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 pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, the applicant asserts her claim of eligibility for temporary resident status and she submits additional evidence, primarily copies of evidence she previously submitted.

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 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 May 3, 2005.

The applicant submitted the following evidence:

- A copy of a Certificate of Live Birth from the state of California dated September 11, 1982 and naming the applicant as the child’s mother;
- A copy of a Children’s Hospital Card issued to the applicant on September 11, 1982;
- Copies of the applicant’s California school records and identification card dated 1976 through 1979;
- A copy of a gas bill from the Southern California Gas Company dated July 30, 1987;
- A copy of a DMV card bearing the applicant’s name and dated March 19, 1986;
- Copies of the applicant’s IRS Form W-2, Wage and Tax Statement for the 1984 and 1986 tax years;
- A copy of a letter dated February 15, 1985 from the Internal Revenue Service concerning the applicant’s tax refund;
- Copies of Medi-Cal cards for the applicant’s children, [REDACTED] and [REDACTED];
- A notice from the County of Los Angeles Social Services dated December 1, 1987, advising the applicant that she continued to be eligible for cash and medical assistance;
- A copy of the applicant’s health care card from the Los Angeles Department of Public Health Services that contains appointment dates listed for 1984, 1985, and 1987;

- A copy of a Certificate of Live Birth from the state of California dated October 27, 1984 and naming the applicant as the child's mother;
- A copy of an invoice from a private immigration agency that is addressed to the applicant and dated April 5, 1988; and,
- A copy of the applicant's Temporary Driver License issued by the California Department of Motor Vehicles on May 28, 1988.

Although the documents demonstrate some evidence of the applicant's presence in the United States since September of 1984, they are insufficient to establish her continuous unlawful residence in the country since before January 1, 1982. The applicant's school records fail to substantiate her claim of being present in the United States subsequent to December of 1977.

The applicant submitted the following attestations:

- A letter from the payroll manager of O.E. Clark Paper Box Company, Inc. in which he stated that the company employed the applicant from November 21, 1981 to January 6, 1982, and from January 29, 1982 to February 9, 1982. This declaration is inconsistent with statements made by the applicant on her Form I-687 application at part #33 where she does not name the paper company as a former employer. This inconsistency calls into question the declarant's ability to confirm that the applicant resided in the United States during the requisite period. Because the letter contains testimony that conflicts with what the applicant indicated on her Form I-687 application, doubt is cast on assertions made in the declaration. In addition, the declaration does not conform to regulatory standards for attestations by employers. Specifically, the declarant does not specify the address(es) where the applicant resided throughout the claimed employment period, nor does the declarant indicate whether the employment information was taken from company records. Neither has the availability of the records for inspection been clarified. 8 C.F.R. § 245a.2(d)(3)(i). Because this letter 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 he stated that he has known the applicant since February of 1970 when he married her sister. He also stated that he and the applicant lived in the same building during that time. Here, the affiant fails to specify the address where the applicant resided during the requisite period. He also fails to indicate the frequency with which he saw and communicated with the applicant during that period. Because this affidavit is lacking in detail, 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 since July 25, 1969 when she started dating the applicant's brother. She also stated that at that time the applicant was living in Los Angeles, California, with her mother. Here, the affiant fails to specify the applicant's place of residence during the requisite period. She fails to indicate the frequency

with which she saw and communicated with the applicant during the requisite period. Because this affidavit is lacking in detail, 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], a retired field parole agent from the California Department of the Youth Authority in which he stated that he has known the applicant since 1980. Here, the affiant fails to indicate the frequency with which he saw or communicated with the applicant during the requisite period.
- A declaration from [REDACTED] in which he stated that the applicant is his sister and that she has been in the United States since 1965. He also stated that he was living in California when his sister arrived and that he would speak to her over the telephone and visit with her regularly. Although the declarant claims that he has known the applicant to be in the United States since 1965, he has failed to provide any relevant and verifiable testimony, such as her places of residence in this country, to corroborate her claim of continuous residence in the United States since prior to January 1, 1982.

The applicant submitted school records and an employment letter for an Elizabeth Sandoval however there is nothing in the record to demonstrate that the applicant and Elizabeth Sandoval is the same person. Because there is nothing in the record to relate the applicant to Elizabeth Sandoval, this evidence cannot be afforded any weight in establishing that the applicant resided in the United States during the requisite period.

The record shows that the director issued a Notice of Intent to Deny (NOID) to the applicant on January 30, 2006, in which he stated that an FBI fingerprints check revealed that the applicant had been arrested at least one time in the United States, and requested that she provide certified court documents that establish the disposition in each case.

In response to the director's NOID, the applicant submitted a Certification of no Records and a copy of the applicant's FBI fingerprint report: which listed the following criminal charges and their dispositions:

- The applicant was arrested in California by the Maywood Police Department on December 17, 1986 and charged with use under influence control substance in violation of Section 11550 of the California Health and Safety Code. The record shows that the applicant was placed in diversion and that the charge was subsequently dismissed by the Municipal Court Huntington Park. (Case Number [REDACTED]).
- The applicant was arrested in California by the Bell Gardens Police Department on November 17, 1988 and charged with willful child cruelty possible injury/death in violation of Section 273(a) of the California Penal Code. The applicant was convicted of that charge and sentenced to 20 days in jail and 36 months probation. The record shows that the applicant was also convicted at that time of use under influence control substance in violation of Section 11550(A) of the California Health and Safety Code and sentenced to 90 days in jail and 36 months probation; the sentence to run concurrent with the child cruelty conviction. (Case Number [REDACTED]).

- The applicant was arrested in California by the South Gate Police Department on September 6, 1990 and charged with use under influence of controlled substance in violation of Section 11550(A) of the California Health and Safety Code. The record shows that the applicant was convicted of that charge and was sentenced to 90 days in jail and 24 months probation. (Case Number [REDACTED]).
- The applicant was arrested in California by the Bell Gardens Police Department on March 13, 1992 and charged with threaten witness victim of crime in violation of Section 140A of the California Penal Code. The record shows that this charge was dismissed. (Case Number [REDACTED]).

In the absence of certified court dispositions, the AAO will not make a finding of inadmissibility.

In denying the application, the director noted that the applicant had made inconsistent statements concerning her entry into the United States; that she had submitted attestations that were lacking in detail, and that the applicant had failed to demonstrate that she and [REDACTED] was the same person.

On appeal, the applicant asserts that she has resided in the United States since 1965 and that when she worked she was paid in cash, and that she paid her bills in cash. The applicant resubmits copies of the evidence that she initially submitted with her Form I-687 application. The applicant also submits on appeal photographs with handwritten dates and copies of her child's public health record dated January of 1985.

In the instant case, the applicant has failed to provide sufficient, credible and probative evidence to establish his continuous unlawful residence in the United States since prior to January 1, 1982, and throughout the requisite period. The applicant has failed to overcome the director's denial. The applicant fails to explain the discrepancies found in the record. The attestations submitted by the applicant are inconsistent with her statements on her Form I-687 application and are also lacking in detail. The applicant's school records do not serve to substantiate her claim of continuous unlawful residence in the United States. There is no evidence in the record to substantiate the authenticity of the photographs submitted by the applicant on appeal.

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 attestations that are inconsistent with her statements made on her Form I-687 application, and that are lacking in detail and 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.