



U.S. Citizenship
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Services

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[REDACTED]

FILE: [REDACTED]
MSC-06-054-10999

Office: NEW YORK

Date: JUL 08 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:

[REDACTED]

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 Records 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. 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, New York. 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, counsel for the applicant stated that the decision was arbitrary, capricious, and against the law and weight of evidence. Counsel also stated that the decision disregards clear, verifiable evidence and demonstrates an unreasonable reliance on unfounded speculation.

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. 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 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 November 23, 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:

Brooklyn, New York from November 1981 to November 1984; Brooklyn, New York from November 1984 to July 1986; and Brooklyn, New York from July 1986 to November 1988. At part #32 where applicants were asked to list all absences from the United States since entry, the applicant listed one absence during the requisite period, which was a trip to Canada to visit a friend from May to June 1987. At part #33 where applicants were asked to list all employment in the United States since entry, the applicant listed the following positions: Household helper for from December 1981 to April 1985; and personal care aide for Personalized Home Care from May 1985 to 1995.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided voluminous documentation, some of which does not relate to the

requisite period or contains illegible dates. The applicant provided original envelopes and photocopies of receipts and other documents that relate to the requisite period.

The applicant provided a copy of a Social Security card listing her name and Social Security number. This document does not include a date and, therefore, is not directly relevant to the question of whether the applicant has established that she resided in the United States throughout the requisite period. However, the fact that the applicant was issued a Social Security number yet she failed to submit a Social Security statement of her earnings in the United States casts some doubt on her claim to have resided in the United States during the requisite period.

The applicant also provided a photocopy of an identity document issued to her by Personalized Home Care, Ltd. The document indicates that it was issued on November 19, 1987. This document tends to show that the applicant resided in the United States during November 1987.

The applicant provided a copy of a marriage certificate, which indicates that the applicant was married in New York on October 1, 1985. This document tends to show that the applicant resided in the United States in October 1985.

The applicant provided two original envelopes addressed to her at the [REDACTED] address. One of the envelopes contains a postmark listing a date that is not clearly legible but appears to be March 22, 1982. The other envelope contains a postmark listing the date December 12, 1982. It is noted that these envelopes appear to have been neither sealed nor opened. There are no tears around the seals of the envelopes, and none of the edges have been cut with a scissors. The postmarks indicate the envelopes were sent from Kingston, Jamaica and they were addressed to the applicant in Brooklyn, New York. It is unreasonable that the envelopes could have traveled through international postage without having been sealed. This casts serious doubt on the credibility of the envelopes and, as a result, on the applicant's claim to have resided in the United States during the requisite period.

The applicant also provided photocopies of envelopes addressed to her in the United States and containing postmarks listing the following dates: December 21, 1981; December 30, 1981; March 12, 1982; June 13, 1986; and October 1987. The problems identified with the original envelopes provided by the applicant cast doubt on the authenticity of the envelopes represented in the photocopies. Therefore, these documents will be given very little weight in determining whether the applicant has established that she resided in the United States during the requisite period.

The applicant provided rent receipts listing her name and addresses and the 1058 Ralph Avenue address, and signed by [REDACTED]. The receipts are dated as follows: January 8, 1982; August 8, 1982; June 8, 1983; July 8, 1983; December 8, 1983; February 8, 1984; August 8, 1984; and November 8, 1984. These documents tend to show that the applicant resided in the United States during January and August 1982; June, July, and December 1983; and February, August and November of 1984.

The applicant provided copies of two Forms W-2 for 1987 and 1988, which list her name and Social Security number and provide the [REDACTED] address. The Forms W-2 indicate that the applicant was employed by Personalized Homecare Ltd. These documents tend to show that the applicant worked and resided in the United States for some part of 1987 and 1988.

The applicant provided two Certificates of Achievement and one Certificate of Completion from Personalized Home Care, Ltd., listing the applicant's name and dated May 1985, November 1985, May 28, 1987 and August 27, 1987. These documents constitute some evidence indicating that the applicant resided in the United States during May and November 1985 and May and August 1987.

The applicant provided a notarized declaration from [REDACTED]. The declaration lists an address for the declarant in Toronto, Canada. The declarant stated that she attended a work session on May 3, 1987, where she saw the applicant. This declaration fails to specify the location of the work session. Therefore, it can be given no weight in determining whether the applicant has established that she resided in the United States during the requisite period.

The applicant submitted an affidavit from [REDACTED]. This affidavit lists the applicant's addresses from 1984 to 1988 in a manner that is consistent with the addresses listed on the applicant's Form I-687. The affiant stated that she worked for the same agency as the applicant but failed to specify which agency. The affiant also failed to provide details regarding the time and place where she met the applicant and the nature and frequency of their contact during the requisite period. Therefore, the affidavit lacks sufficient detail to confirm that the applicant resided in the United States during the requisite period.

The applicant provided a notarized declaration from [REDACTED] which states that the applicant was employed by the declarant from December 1981 to April 1985 as household help at a salary of \$180. This declaration fails to provide details including the frequency and hours of the applicant's employment with the declarant, whether the applicant was ever absent from the United States during the period of employment, and whether the declarant has any record of the salary payments she made to the applicant. Therefore, this declaration is found to lack sufficient detail to confirm that the applicant resided in the United States from December 1981 to April 1985.

The applicant submitted an affidavit from [REDACTED]. This affidavit lists the applicant's addresses from 1985 to 1988 in a manner that is consistent with the addresses listed on the applicant's Form I-687. The affiant stated that she is able to determine the date of the beginning of her acquaintance with the applicant because she lived with the applicant. The affiant failed to clearly explain how, when and where she met the applicant, and how they came to be living together. Therefore, this affidavit is found to lack sufficient detail to confirm that the applicant resided in the United States from 1985 to 1988.

The applicant submitted an affidavit from [REDACTED] dated June 8, 1990. This affidavit lists the applicant's addresses from December 1981 to 1988 in a manner that is consistent with the addresses listed on the applicant's Form I-687. The affiant stated that she is able to determine the date of the

beginning of her acquaintance with the applicant because the applicant resided at the affiant's house. The affiant failed to clearly explain how, when and where she met the applicant, when they lived together, and how they came to be living together. Therefore, this affidavit is found to lack sufficient detail to confirm that the applicant resided in the United States during the requisite period.

The applicant provided another affidavit from [REDACTED] dated September 15, 1989. The affiant stated that lived with her at the [REDACTED] address from November 1981 to November 1984. The affiant stated that the rent receipts and household bills are in the affiant's name, and the applicant contributes toward the payment of the rent and household bills. This information is somewhat inconsistent with the record, which contains rent receipts issued to the applicant and signed by the affiant. This inconsistency calls into question the affiant's ability to confirm the applicant's residence during the requisite period. In addition, the inconsistency casts some doubt on the authenticity of the rent receipts provided by the applicant. Lastly, this affidavit fails to clearly explain how, when and where the affiant met the applicant. It also fails to provide details regarding whether the applicant was absent from the United States during the requisite period. Therefore, this affidavit is found to lack sufficient detail to confirm that the applicant resided in the United States during the requisite period.

The applicant submitted an affidavit from [REDACTED], which states that the applicant has lived with the affiant at the [REDACTED] address from November 1984 to July 1986. This affidavit fails to explain how, when and where the affiant met the applicant and how they came to be living together. It also fails to provide details regarding whether the applicant was absent from the United States during the requisite period. Therefore, this affidavit is found to lack sufficient detail to confirm that the applicant resided in the United States during the requisite period.

[REDACTED] also provided an affidavit indicating that the applicant lived with him at the [REDACTED] address from July 1986 to November 1988. Again, this affidavit fails to explain how, when and where the affiant met the applicant and how they came to be living together. It also fails to provide details regarding whether the applicant was absent from the United States during the requisite period. Therefore, this affidavit is found to lack sufficient detail to confirm that the applicant resided in the United States during the requisite period.

The applicant provided a declaration dated July 20, 1989 from [REDACTED], coordinator of Personalized Home Care, Ltd. in Yonkers, New York. The declaration states that the applicant has been a full-time employee of that agency since May 1985. This declaration does not conform to regulatory standards for letters from employers as stated in 8 C.F.R. § 245a.2(d)(3)(i). Specifically, the declaration does not include the applicant's address at the time of employment, duties with the company, whether or not the information was taken from official company records, where the records are located, and whether CIS may have access to the records. As a result, this declaration will be given very little weight.

The record includes a Form I-130 Petition for Alien Relative filed on behalf of the applicant by her husband on January 17, 1986. At part #21 of the Form I-130 where the applicant's husband was

asked to list the last address where he and the applicant resided together, her husband listed the [REDACTED] address from October 1985 to present. As noted above, the applicant's Form I-687 indicates that she began living at the [REDACTED] address in November 1984. The director's decision identified the statements on the Forms I-130 and I-687 as inconsistent with each other. The information listed on the Form I-130 is consistent with the applicant's Form I-687 because it merely indicates that the applicant's husband did not begin living with her until after their marriage in October 1985. Therefore, this aspect of the director's decision is withdrawn.

As stated above, the record indicates that an I-130 petition was filed on the applicant's behalf in January 1986. The record contains a letter dated November 17, 1986 from the applicant's prior attorney to the Immigration and Naturalization Service, currently CIS, in New York. The letter lists the applicant's name and prior alien number at the top and states: "Gentlemen: The beneficiary of the Petition is unable to prove inspection. Please send the Petition to Kingston, Jamaica. Please send us an amended I-171." It is noted that a Form I-171 is a Notice of Approval of Relative Immigrant Visa Petition, and this form is typically used in the case where an immigrant visa has been approved on behalf of a beneficiary when the beneficiary is outside of the United States. This information tends to show that the applicant was absent from the United States in November 1986. The applicant failed to list this absence on her Form I-687 when asked to list all absences from the United States. This inconsistency casts some doubt on the applicant's statements regarding her periods of absence and, as a result, casts some doubt on her claim to have resided in the United States throughout 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.

On appeal, counsel for the applicant stated that the decision was arbitrary, capricious, and against the law and weight of evidence. Counsel also stated that the decision disregards clear, verifiable evidence and demonstrates an unreasonable reliance on unfounded speculation.

In summary, the applicant has provided contemporaneous evidence and attestations that, when taken as a whole, fails to establish by a preponderance of the evidence that she resided in the United States throughout the requisite period. The applicant showed evidence of a Social Security card listing her name, but she failed to submit a Social Security statement of her earnings. The copy of an identity document from Personalized Home Care, Ltd. issued in November 1987 casts some doubt on the applicant's claim to have begun working there in May 1985. The original envelopes addressed to the applicant in the United States from overseas during the requisite period appear to have been neither sealed nor opened, and this detracts from the evidentiary value of these envelopes and the photocopies of other envelopes that the applicant submitted. The rent receipts the applicant provided are inconsistent with the statements of [REDACTED] indicating that rent receipts for the period in question were issued in Ms.

█ name, rather than in the applicant's name. The attestations provided by the applicant fail to indicate that the applicant resided in the United States during the requisite period, lack sufficient detail, are inconsistent with other documents in the record, or do not conform to regulatory standards. The record tends to show that the applicant was absent from the United States during November 1986, yet the applicant failed to list this absence on her Form I-687. The Forms W-2 provided by the applicant tend to show that she resided in the United States for some part of 1987 and 1988. The certificates from Personalized Home Care, Ltd. constitute some evidence that the applicant resided in the United States during May and November 1985 and May and August 1987. The applicant lacks sufficient credible evidence of her residence in the United States for the period beginning before January 1, 1982 and ending in May 1985.

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 Form I-687 and the other documents in the record, 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.