



U.S. Citizenship
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FILE: [REDACTED]
MSC-05-313-12160

Office: LOS ANGELES

Date: **JUL 14 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. 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, or *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, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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 August 9, 2005 (together, the I-687 Application). 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 submitted a Form I-694 Notice of Appeal of Decision Under Section 210 or 245A, additional evidence, and a written statement. As of this date, the AAO has not received any additional evidence from the applicant. Therefore, the record is complete.

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 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).

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). To meet his or her burden

of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.2(d)(6).

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.* 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. *See* 8 C.F.R. § 245a.2(d)(6). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. Although not required, the credibility of an affidavit may be assessed by taking into account such factors as whether the affiant provided some proof that he or she was present in the United States during the requisite period. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

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 (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 entered before 1982 and resided in the United States for the requisite period. In this case, the submitted evidence is relevant, probative and credible.

On August 9, 2005, the applicant filed her Form I-687 Application. The record includes the following documents in support of her claim of residence in the United States during the requisite period:

- A copy of the immunization records for [REDACTED], the applicant's son, from August 7, 1981 to May 31, 1985;
- A copy of the immunization records for [REDACTED], the applicant's daughter, from September 16, 1982 to October 24, 1986;
- A proof of birth statement from the Martin Luther King, Jr./Drew Medical Center in Los Angeles, California confirming the birth of [REDACTED], the applicant's son, on

October 2, 1980;

- A proof of birth statement from the Martin Luther King, Jr./Drew Medical Center in Los Angeles, California confirming the birth of [REDACTED], the applicant's son, on November 16, 1981;
- A letter dated October 20, 2006 from the Lillian Street Elementary School on school letterhead and containing the school's seal. The letter states that based on school records [REDACTED] attended Lillian Street Elementary School from July 28, 1986 to June 15, 1989. The letter also states that [REDACTED] lived with her mother, the applicant, at [REDACTED] Los Angeles, California. The school enclosed a copy of [REDACTED]'s cumulative record card showing her school attendance.
- A letter dated October 20, 2006 from the Lillian Street Elementary School on school letterhead and containing the school's seal. The letter states that based on school records [REDACTED] attended Lillian Street Elementary School from July 22, 1985 to June 15, 1989. The letter also states that [REDACTED] lived with his mother, the applicant, at [REDACTED] Los Angeles, California. The school enclosed a copy of [REDACTED]'s cumulative record card showing his school attendance.
- A copy of [REDACTED], the applicant's son, California birth certificate stating that he was born on October 2, 1980;
- A copy of [REDACTED] the applicant's son, proof of birth from the County of Los Angeles Department of Health Services Southeast Health Services Region stating that he was born on October 2, 1980;
- A baptismal certificate from the St. Martha Church in Huntington Park, California for Andres Ordones dated February 7, 1981;
- A baptismal certificate from the Parroquia de San Matias in Huntington Park, California for [REDACTED] dated March 5, 1983;
- A Honors in Scholarship certificate from the Lillian Street School for [REDACTED] dated June 29, 1987;
- Receipts from the County of Los Angeles dated August 18, 1981 and September 1, 1981 which include the applicant's name and address;
- A school certificate for [REDACTED] dated June 29, 1987;
- A copy of the applicant's 1981 medical records from the Department of Health Services County of Los Angeles;
- A copy of the applicant's Internal Revenue Service (IRS) 1988 Form W-2;

- A letter from the Lillian Street Elementary School on school letterhead and signed by the [REDACTED] principal, confirming the attendance for [REDACTED] and [REDACTED] from July 1, 1985 to June 15, 1994;
- A declaration from [REDACTED] stating that he has known the applicant since 1977. The declarant submitted Social Security Administration records as from 1980 to 2004 as evidence of his presence in the United States during the requisite period; and,
- A letter from the County of Los Angeles Treasurer and Tax Collector on official letterhead and containing a Los Angeles County seal. The letter states that the applicant received welfare services from January 1981 to November 1999; food stamps from January 1981 to November 1999; and Medi-Cal from January 1981 to July 2000 and December 2000 to December 2003 for children born in the United States. The letter also indicates that the applicant is has agreed to pay money owed to the department.

On December 9, 2006, the director issued a denial notice. In the denial, the director concluded that the applicant had failed to submit sufficient evidence to establish her continuous, unlawful residence in the United States from 1983 through 1987.

On appeal, the applicant submits a written statement and additional evidence of her residence in the United States during the requisite period.

The contemporaneous documents submitted by the applicant appear to be credible. The letters, declarations and other documentation submitted by the applicant appear to be credible and amenable to verification in that each include contact telephone numbers and/or contact addresses. Upon review of the totality of the record, although the AAO has some doubt as to the truth, the record contains sufficient relevant probative, and credible evidence that leads the AAO to believe that the claim is "probably true" or "more likely than not." Thus the applicant has satisfied the standard of proof. See *U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (defining "more likely than not" as a greater than 50 percent probability of something occurring).

The director has not established that the information on the supporting documents in the record was inconsistent with the applicant's testimony or with the claims made on her I-687 Application; that any inconsistencies exist *within* the claims made on the supporting documents; or that the documents contain false information. As stated in *Matter of E-M-*, 20 I&N Dec. at 80, when something is to be established by a preponderance of the evidence, the proof submitted by the applicant has to establish only that the asserted claim is probably true. That decision also states that, under the preponderance of evidence standard, an application may be granted even though some doubt remains regarding the evidence. *Id.* at 79. The documents that have been furnished in this case may be accorded substantial evidentiary weight and are sufficient to meet the applicant's burden of proof of residence in the United States for the requisite period.

Beyond the decision of the director, also at issue in this proceeding is whether the applicant is likely to become a public charge. An applicant must establish that she is not ineligible for admission under one

or more of the categories listed in section 212(a) of the Immigration and Nationality Act. 8 U.S.C. §1182(a). Among the categories of inadmissible aliens are those likely to become a public charge. If an applicant is determined to be inadmissible under section 212(a)(4) of the Act, he or she may still be admissible under the Special Rule described under paragraph (d)(3) of this section. *See* 8 C.F.R. § 245a.18(c)(2)(iv).

The regulations at 8 C.F.R. § 245a.18(d)(1), 8 C.F.R. § 245a.18(d)(2), and 8 C.F.R. § 245a.18(d)(3) provide the factors to be considered in determining whether an applicant is likely to become a public charge and whether the special rule applies.

(1) In determining whether an alien is “likely to become a public charge,” financial responsibility of the alien is to be established by examining the totality of the alien's circumstance at the time of his or her application for adjustment. The existence or absence of a particular factor should never be the sole criteria for determining if an alien is likely to become a public charge. The determination of financial responsibility should be a prospective evaluation based on the alien's age, health, family status, assets, resources, education and skills.

(2) An alien who has a consistent employment history which shows the ability to support himself or herself even though his or her income may be below the poverty level is not excludable under paragraph (c)(2)(vi) of this section. The alien's employment history need not be continuous in that it is uninterrupted. In applying the Special Rule, the Service will take into account an alien's employment history in the United States to include, but not be limited to, employment prior to and immediately following the enactment of IRCA on November 6, 1986. However, the Service will take into account that an alien may not have consistent employment history due to the fact that an eligible alien was in an unlawful status and was not authorized to work. Past acceptance of public cash assistance within a history of consistent employment will enter into this decision. The weight given in considering applicability of the public charge provisions will depend on many factors, but the length of time an applicant has received public cash assistance will constitute a significant factor. It is not necessary to file a waiver in order to apply the Special Rule for determination of public charge.

(3) In order to establish that an alien is not inadmissible under paragraph (c)(2)(vi) of this section, an alien may file as much evidence available to him or her establishing that the alien is not likely to become a public charge. An alien may have filed on his or her behalf a Form I-134, Affidavit of Support. The failure to submit Form I-134 shall not constitute an adverse factor.

The burden is on the applicant to establish that she is not likely to become a public charge. The record of proceeding contains a letter from the County of Los Angeles Treasurer and Tax Collector indicating that the applicant received welfare services from January 1981 to November 1999 and food stamps from January 1981 to November 1999. However, the record of proceeding also contains an affidavit of support for the applicant signed by _____ In his affidavit of support, _____ states that his current annual income is \$42,716.00 per year and including

the applicant, his household size would include two individuals. M [REDACTED] also submitted a letter from [REDACTED] confirming his employment, copies of his paystubs, and his 2003 – 2005 IRS Forms W-2 and 1040 verifying his income. According to the 2008 Form I-864P, Poverty Guidelines, the minimum income requirement for a household of two that applies to [REDACTED] is \$17,500, or 125% of the poverty line. [REDACTED]'s income meets the minimum required by Form I-864P. In addition, the applicant has submitted a letter from [REDACTED] stating that the applicant is paid \$240 bi-weekly for babysitting services. The applicant has submitted evidence to establish that she is not likely to become a public charge. Thus, the applicant has met her burden of proof.

The applicant has established by a preponderance of the evidence that she entered the United States before January 1, 1982 and maintained continuous, unlawful residence for the duration of the requisite period. In addition, the applicant has established that she is not likely to become a public charge. Consequently, the applicant has overcome the particular basis of denial cited by the director.

The appeal will be sustained. The director shall continue the adjudication of the application for temporary resident status.

ORDER: The appeal is sustained.