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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services



FILE:

MSC-05-251-19416

Office: NEW YORK

Date:

JUL 22 2008

IN RE:

Applicant:



APPLICATION:

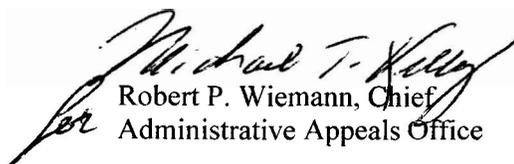
Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:



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, 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, on June 8, 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, specifically noting that the applicant submitted evidence already in the record of proceeding in response to the director's April 6, 2006 notice of intent to deny. 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, counsel submitted a Form I-694 Notice of Appeal of Decision Under Section 210 or 245A and waived the right to submit a written brief or statement. On the Form I-687, counsel states that the affidavits submitted "were not given due consideration" and that the "denial was based solely on the fact that the applicant only submitted affidavit[s]." Counsel also states that "the passage of time and the attendant difficulty of obtaining documents [were] not [given] consideration." As of this date, the AAO has not received a brief or any additional evidence from counsel or the applicant. Therefore, the record is complete.

The AAO bases its decision upon its *de novo* review of the entire record of proceeding, which included its own independent analysis of all the evidence. The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). As reflected in the discussion of the evidence below, and contrary to the director, the AAO did not discount any of the witness statements for lack of a phone number, identifying documentation, or proof of the declarant's presence in the United States. Rather, the AAO evaluated the content of each statement for probative value and credibility in accordance with the analytical framework described below.

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, and 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 "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. 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.

The record shows that the applicant submitted a Form I-687 Application and Supplement to Citizenship and Immigration Services (CIS) on June 8, 2005. At part #30 of the Form I-687 application where applicants are asked to list all residences in the United States since first entry, the applicant listed her first address in the United States as [REDACTED] Yonkers, New York, from July 1981 to February 1985. At part #33, the applicant did not list any employment in the United States. At part #32, the applicant listed one absence from the United States since entry. According to the Form I-687, the applicant visited Canada from June 1987 to July 1987.

The applicant has provided five notarized affidavits; a letter signed by [REDACTED] stating that she was "first examined and treated for abdominal pain secondary to fibroids on June 14, 1990;" a copy of the applicant's New York identification card issued on October 18, 2005; a copy of the applicant's marriage certificate showing that she was married on December 28, 2005. The applicant's New York identification card is evidence of the applicant's identity, but does not demonstrate that she entered before January 1, 1982 and resided in the United States for the requisite period. The record of proceeding includes the following witness statements:

- A notarized form-letter "Affidavit of Witness" from [REDACTED] dated July 16, 2005. The declarant states that he has "personal knowledge that the applicant has resided in the United States" from December 1998 to the present. The declarant lists three addresses for the applicant from December 1998 to the present. This information is inconsistent with the applicant's Form I-687. On the Form I-687, the applicant listed one address from December 1998 to the present. Furthermore, in a notarized form-letter "Affidavit of Residence" from the declarant dated May 12, 2005 the declarant provided contradictory information. The declarant stated that he resides at [REDACTED] Bronx, New York and that the applicant lived with him at his address from December 1998 to the present. The AAO notes that the declarant failed to provide information regarding how "he is able to determine the date of the beginning of his acquaintance with the applicant" or the "longest period during the residence described in which he has not seen the applicant." Given these deficiencies, this affidavit has minimal probative value

in supporting the applicant's claims that she entered the United States in 1981 and resided in the United States for the entire requisite period.

- A notarized form-letter "Affidavit of Witness" from [REDACTED] dated July 15, 2005. The declarant states that he has "personal knowledge that the applicant has resided in the United States" from December 1986 to September 1998. The declarant states that the applicant lived at [REDACTED] Bronx, New York from December 1986 to September 1998. Although this information is consistent with the applicant's Form I-687, the declarant failed to provide information regarding how "he is able to determine the date of the beginning of his acquaintance with the applicant" or the "longest period during the residence described in which he has not seen the applicant." Although the declarant states that he has known the applicant since 1986, the statement does not supply enough details to lend credibility to a 19-year relationship with the applicant. For instance, the declarant does not indicate how he met the applicant, how he dates his initial acquaintance with the applicant in the United States, or how frequently he had contact with the applicant. Given these deficiencies, this affidavit has minimal probative value in supporting the applicant's claims that she entered the United States in 1981 and resided in the United States for the entire requisite period.
- A notarized form-letter "Affidavit of Residence" from [REDACTED] dated May 16, 2005. The declarant states that he resides at [REDACTED] Yonkers, New York and that the applicant lived with him at his address from July 1981 to February 1985. This information is consistent with the applicant's Form I-687. In addition, the declarant stated that "the rent receipts and household bills are in [his] name and the applicant contribute[d] toward the payment of the rent and household bills." Furthermore, the declarant did not provide any details regarding the applicant's share of the rent and other household bills. Given these deficiencies, this affidavit has minimal probative value in supporting the applicant's claims that she entered the United States in 1981 and resided in the United States for the entire requisite period.
- A notarized form-letter "Affidavit of Residence" from [REDACTED] dated May 12, 2005. The declarant states that he resides at [REDACTED], Bronx, New York and that the applicant lived with him at his address from December 1986 to September 1998. This information is consistent with the applicant's Form I-687. In addition, the declarant stated that "the rent receipts and household bills are in [his] name and the applicant contribute[d] toward the payment of the rent and household bills." Furthermore, the declarant did not provide any details regarding the applicant's share of the rent and other household bills. Given these deficiencies, this affidavit has minimal probative value in supporting the applicant's claims that she entered the United States in 1981 and resided in the United States for the entire requisite period.

None of the above witness documents contain detailed information generated by the asserted contact with the applicant that is sufficient to demonstrate the actual extent of that contact.

The remaining evidence in the record is comprised of the applicant's statements, in which she claims to have entered the United States in July 1981 and to have resided for the duration of the requisite period in New York. The AAO notes that the record of proceeding does not contain an address for the applicant from March 1985 to November 1986. The applicant has not submitted any additional evidence in support of her claim that she was physically present or had continuous residence in the United States during the entire requisite period or that she entered the United States in 1981.

The director issued a notice of intent to deny (NOID) on November 15, 2005 and on June 15, 2006. The director denied the application for temporary residence on April 6, 2006. In addition, the director noted that the applicant submitted evidence already in the record of proceeding in response to the director's April 6, 2006 NOID. In denying the application, the director found that the applicant failed to establish that she entered the United States prior to January 1, 1982 or that she met the necessary residency or continuous physical presence requirements. Thus, the director determined that the applicant failed to meet her burden of proof by a preponderance of the evidence.

On appeal, counsel states that the affidavits submitted "were not given due consideration" and that the "denial was based solely on the fact that the applicant only submitted affidavit[s]." Counsel also states that "the passage of time and the attendant difficulty of obtaining documents was not [given] consideration." The AAO notes that the director's concerns in the NOID and in her decision were not specifically addressed by counsel. The passage of time was taken into consideration and, as noted above, 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. Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that she is eligible for the benefit sought.

In this case, the absence of sufficient credible and probative documentation to corroborate the applicant's claim of continuous residence for the requisite period seriously detracts 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 lack of credible supporting documentation, it is concluded that the applicant has failed to establish by a preponderance of the evidence that she 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.