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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

MSC 06 088 17721

Office: FRESNO

Date: **JUL 29 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.

for Michael T. Kelly
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, Fresno, CA. 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 that she has established her unlawful residence for the requisite time period, that she is qualified under Section 245A of the Act and the CSS/NEWMAN settlement agreements, and that her application for temporary resident status should be granted. The applicant states on appeal, that the affidavits previously submitted by her state that she entered the United States in October of 1982. She states, on appeal, that those dates were incorrect and that she entered the United States prior to 1982. The applicant requested an additional 30 days to submit corrected affidavits. The applicant's appeal was filed on November 17, 2006. To date, no additional evidence has been received from the applicant. The file is, therefore, deemed complete and ripe for adjudication.

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 245(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 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her 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).

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.

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 applicant submitted the following documentary evidence:

Affidavits

- [REDACTED] states in his sworn affidavit that he is a naturalized United States citizen residing in Burbank, CA. He states that he has been a friend of the applicant's husband since 1982, and that the applicant came to the United States in October of 1982. The affiant states that he is aware of the applicant's presence in the United States, in California, since 1982 because of his friendship with the applicant and her husband.
- [REDACTED] states in his sworn affidavit that he is a permanent United States resident residing in Fresno, CA. He states that he met the applicant through his brother-in-

law, and that he is aware that the applicant came to the United States in October of 1982. The applicant further states that he has remained in contact with the applicant and knows that the applicant has been living in the United States, in California, for the past 23 years.

- [REDACTED] states in her sworn affidavit that she is a permanent United States resident residing in Fresno, CA. She states that she met the applicant through her brother-in-law, and that she is aware that the applicant came to the United States in October of 1982. The applicant further states that she has remained in contact with the applicant and knows that the applicant has been living in the United States, in California, for the past 23 years.

As noted earlier in this decision's reference to 8 C.F.R. § 245a.2(d)(6), the applicant must provide evidence of eligibility apart from her own testimony. The affidavits from others that the applicant submitted in support of her application all attest to the applicant's first coming to the United States after the prior-to-January 1, 1982 entry date required to qualify for the benefits of the application. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. Although not required, there is no supporting documentation of the affiant's presence in the United States during the requisite period. Further, none of the affiants provided detailed evidence establishing how they knew the applicant, the details of their association or relationship, or detailed accounts of their ongoing association establishing a relationship under which the applicant could be reasonably expected to have personal knowledge of the applicant's residence, activities and whereabouts during the requisite period covered by the applicant's Form I-687. To be probative, affidavits and related proof must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. The proof must be presented in sufficient detail to establish that a relationship does in fact exist, how the relationship was established and sustained, and that the affiant does, by virtue of that relationship, have knowledge of facts alleged. 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 his 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 the affidavits submitted fail to establish continuous residence in an unlawful status in the United States during the requisite period.

- APPLICANT'S SWORN STATEMENT

The applicant issued a sworn statement on April 9, 2006 in support of her application for legalization. She states that she originally entered the United States in December of 1981, following her husband who had arrived in June of 1981. The applicant states that she did not apply for legalization/amnesty during the statutory period of May 5, 1987 – May 4, 1988 because she was thinking about returning to Mexico. The applicant further states that she departed the United States on three occasions since her arrival, twice for the birth of her

children, and once due to the death of her father. The dates of departure are the same as set forth on the applicant's Form I-687 application.

The applicant's sworn statement is directly contradicted by the three affidavits submitted in support of her application. The applicant states that she arrived in the United States in December of 1981, while the affidavits submitted by her state that she arrived in October of 1982. This discrepancy has not been sufficiently explained by the applicant. On appeal, she simply states that the dates listed in the affidavits are incorrect, that she did not read the affidavits and believed that they stated she arrived in the United States prior to 1982. The applicant's sworn statement further states that the applicant did not attempt to apply for legalization/amnesty during the statutory period for filing because she thought that she may return to Mexico. The applicant, however, submitted a CSS/Newman (LULAC) Class Membership Worksheet stating that she attempted to file for legalization/amnesty during the statutory period, but was turned away because she had traveled outside the United States after November 6, 1986. The applicant has not explained this discrepancy. This material inconsistency calls the applicant's credibility into question. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Finally, the applicant states on her form I-687 that she traveled outside the United States in April of 1983, and returned 3 months later in June of 1983. She departed the country to be with her family during the birth of her first child.

The regulation at 8 C.F.R. § 245a.2(6)(h)(i) states as follows:

- (h) *Continuous residence.* (1) For the purpose of this Act, an applicant for temporary resident status shall be regarded as having resided continuously in the United States if, at the time of filing of the application:
 - (i) No single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982 through the date the application for temporary resident status is filed, unless the alien can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed;

....

In view of the above regulation, the applicant has also failed to establish continuous residence during the requisite period because her 1983 absence from the United States exceeded, by her own admission, 45 days. The record does not establish that the applicant's return to the United States

within the time permitted for "continuous residence" absences could not be accomplished due to emergent reasons. Although the term "emergent reasons" is not defined by regulation, *Matter of C-*, 19 I. & N. Dec. 808 (Comm. 1988), holds that emergent means "coming unexpectedly into being." The applicant, in this instance, provides no evidence of emergent reasons causing her prolonged absence from the United States. The record does not establish that the absence was caused by an event which came "unexpectedly into being."

Therefore, based upon the foregoing, 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.