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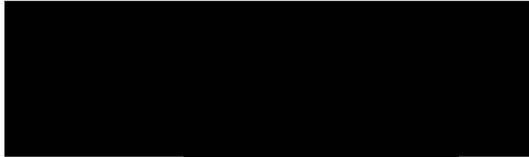
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
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FILE: [REDACTED]
MSC-05-221-10963

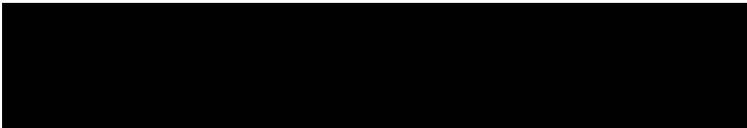
Office: NEW YORK

Date: JUN 04 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:



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. 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, New York, 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 entered into the United States before January 1, 1982, or 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 provided the director with sufficient evidence to overcome the grounds of the denial.

She contends that the affiants' statements were based upon their direct personal knowledge of the "events of [her] residency" and, as submitted, supported her claim.

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 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 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 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, or of entry to the United States before January 1, 1982. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687 application (hereinafter the subject I-687 application) and Supplement to Citizenship and Immigration Services (CIS) on May 9, 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 showed her first address in the United States to be in [REDACTED] Astoria, Queens, New York from November 1981 to February 1996; at [REDACTED], Queens, New York from February 1996 to August 2000; and at [REDACTED], Brooklyn, New York from August 2000 to present.

Similarly, at part #33, she showed her first employment in the United States to be for Odd-Jobs Store, [REDACTED], Astoria, New York from July 1990 to September 1992.

In contradiction to the above, there is an earlier Form I-687 application within the record of proceeding signed by the applicant on November 21, 1994, that stated in part #33 that the applicant resided at [REDACTED], Brooklyn, New York, from November 1981 to May 1985; resided at [REDACTED] Astoria, New York, from May 1985 to December 1986; resided at [REDACTED] Woodside, New York, from January 1987 to January 1990; and from [REDACTED] Astoria, New York from January 1990 to present (i.e. November 21, 1994).

Further in contradiction to both of the above sworn applications, there is found a Form I-601 "Application for Waiver of Ground of Excludability" within the record of proceeding signed by the applicant and filed with Citizenship and Immigration and Services (CIS) on May 12, 2005, that stated the applicant resided at [REDACTED], Brooklyn, New York, at the time of preparation and signing of this Form and according to part #11 of the Form the applicant stated she previously resided at Queens, New York from 1992 to present (the date she signed the application), and in San Diego, California, from 1981 to 1985.

The applicant has provided no explanation for these inconsistencies in sworn documents she signed and submitted to CIS in effort to obtain immigration benefits.

Doubt cast on any aspect of the petitioner's proof may, of course, 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 (BIA 1988). If CIS fails to believe that a fact stated in the petition is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

On March 1, 2006, the director issued a Notice of Intent to Deny (NOID) to the applicant. The NOID stated that the applicant failed to submit documentation to establish her eligibility for Temporary Resident Status. The applicant was afforded thirty (30) days to provide additional evidence in response to the NOID.¹ The director stated that the applicant had submitted contradictory evidence concerning her residences in the United States since her first entry, specifically an earlier Form I-687 application signed by the applicant on November 21, 1994, the present I-687 application signed April 20, 2005, and in her sworn testimony on February 28, 2006 in a CIS interview. According to the report of that interview found in the record, the applicant stated that her first residence in the United States was in Brooklyn, New York.

Further, the director stated that at the February 28, 2006, interview the applicant stated that she made only one trip outside the United States in 1991, but the subject I-687 application stated that the applicant traveled outside the United States from July until August 1987.

In response to the NOID, the applicant submitted copies of her passport, her New York State photo identification card and the following documents:

¹ The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that may be provided to establish proof of continuous residence in the United States during the requisite period. This list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts, or letters.

- An affidavit made on March 28, 2006, by [REDACTED] of Brooklyn, New York, that stated he first met the applicant during the summer of 1985 and that he knew the applicant for many years. He stated that he knew the applicant resided at [REDACTED] Astoria, New York.

The applicant has not stated in the subject I-687 application that she resided at [REDACTED] Astoria, New York. However in the I-687 application she prepared and signed on November 21, 1994, the applicant stated she resided at that address from May 1985 to December 1986. While the applicant's sworn statements provided in the subject Form I-687 are at issue here, the applicant's statements of her prior residences are inconsistent and contradictory on their face and since Mr. [REDACTED]'s statement concerning the applicant's Astoria residence is contradicted by the applicant's Form I-687's statement, the AAO is unable based upon the evidence submitted to determine the truth of the matter. The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Further, since [REDACTED] has stated he first met the applicant in 1985, his affidavit does not demonstrate that the applicant was present in the United States prior to January 1, 1982, nor is it for the reasons above stated evidence that the applicant continuously resided in the United States during the requisite period.

- An affidavit made March 28, 2006, by [REDACTED] of Elmhurst, New York, that stated he had known the applicant for several years and that the applicant lived at [REDACTED] Woodside, New York, from January 1987 to January 1990. According to the instant I-687 application, the applicant did not reference that [REDACTED] address as her residence.

Similarly, the applicant has not stated in the instant I-687 application that she resided at [REDACTED] Woodside, New York. Mr. [REDACTED]'s statement of the applicant's residence contradicts the applicant's I-687 application signed April 20, 2005. [REDACTED]'s and [REDACTED]'s statements of the applicant's residences correlate to the prior I-687 application prepared and signed on November 21, 1994 as submitted to CIS. Both statements are in conflict with the applicant's present Form I-687 application and they both are devoid of details that are verifiable. The affiants failed to state that they have direct, personal knowledge of the applicant's continuous residence in the United States. They do not indicate specifically where or under what circumstances they met the applicant, their frequency of contact with her during this period, or any other details of the events and circumstances of the applicant's residence.

- An affidavit made on March 27, 2006, by [REDACTED] of Brooklyn, New York, that stated he first met the applicant in November 1981 and that he provided the applicant with room and board at [REDACTED] Brooklyn, New York, until May 1985.

Similarly, the applicant has not stated in the instant I-687 application that she resided at [REDACTED] [REDACTED], Brooklyn, New York. [REDACTED]'s affidavit also contradicts the applicant's I-687 application signed April 20, 2005. Therefore, [REDACTED]'s affidavit will be given no weight.

The director stated that the above affiants, [REDACTED] could not be contacted for verification of the information in their respective affidavits.

None of the above affidavits provided relevant, probative, and credible evidence to support the applicant's claim she had entered into the United States before January 1, 1982, and continuously resided in the United States in an unlawful status for the duration of the requisite period.

The director denied the application for temporary residence on June 21, 2006. According to the director, the evidence submitted by the applicant was insufficient to overcome the grounds for denial. The director determined that the applicant had not established by a preponderance of the evidence that she had entered into the United States before January 1, 1982, or continuously resided in the United States in an unlawful status for the duration of the requisite period. Specifically, the director found that the discrepancies between the applicant's testimony and the evidence of record required an explanation that was not provided.

The applicant submitted no additional evidence upon appeal.

In this case, the absence of sufficient credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, or of entry to the United States before January 1, 1982, as well as the inconsistencies and contradictions noted in the record, seriously detract 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 inconsistencies in the record and the lack of credible supporting documentation, it is concluded that she 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.

It is noted that there is an outstanding warrant of removal/deportation dated September 6, 2006 in the record.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.