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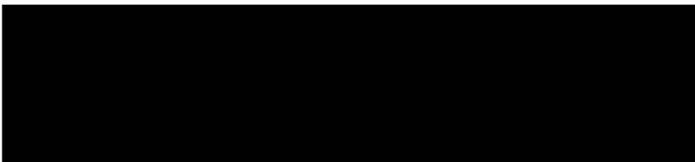
FILE: [Redacted] Office: LOS ANGELES
MSC-05-155-11837

Date: **JUN 09 2008**

IN RE: Applicant: [Redacted]

PETITION: 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 if the matter was remanded for further action, you will be contacted.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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, Los Angeles, California. 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, together comprising 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, the director found that the applicant had not provided sufficient credible evidence of residence because she had admitted to multiple fraudulent entries into the United States. 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, through counsel, reiterates her claim of residence in this country for the requisite period. She also acknowledges that she initially entered the United States by means of a fraudulent passport, and on several occasions thereafter traveled to and from the Philippines while using fraudulent travel documents. She also admits that she stated multiple times during her interview that she mailed her I-687 application package from either Carson or Los Angeles, when in fact; the postmark indicates that the package was mailed from El Centro. The applicant submits her own sworn declaration in support of her appeal, and asserts therein that her travel documents were initially procured and held by her aunt, [REDACTED], and that she had no knowledge that they were not genuine. She also maintains that she paid someone to fill out the Application for Status as a Temporary Resident and mailed the envelope given to her as instructed by the preparer. The applicant submits two additional affidavits in support of her appeal.

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 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). 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.

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 (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 establish continuous unlawful residence in the United States for the requisite period. Here, the submitted evidence is neither credible nor sufficient, and does not provide an adequate explanation for the applicant's initial acts of fraud.

The record shows that the applicant submitted her I-687 Application to U.S. Citizenship and Immigration Services (CIS) on March 4, 2005. The director determined that the applicant had failed to submit sufficient credible evidence to establish that she had continuously resided in the United States for the requisite period and, accordingly, denied the application on July 12, 2006. The director noted specifically that the applicant admitted under oath to having committed fraud or misrepresentation by entering the United States on at least two occasions in 1981 and 1983 by using another person's passport. Furthermore, the director noted that the applicant submitted two affidavits; one from her brother, [REDACTED], and one from her uncle, [REDACTED], who aver that the applicant resided in the United States from November, 1981 through April, 1988. Both affiants state that the applicant resided at [REDACTED] Edison, NJ. Mr. [REDACTED] claimed that he resided at the same address with his sister. The affidavits contained no other relevant information. The director observed that affidavits lacked specificity and detail such as to undermine their probative value. Finally, the director noted that

the applicant affirmed under oath that she mailed her I-687 application package from the Carson/Los Angeles area, but the postmark revealed that it was actually mailed from El Centro, located at least three hours from Los Angeles. The director concluded that the evidence submitted by the applicant was not reliable or credible, and therefore, the applicant had not met her burden of proof by a preponderance of the evidence to establish eligibility for temporary residence status.

In her brief on appeal, the applicant maintains that she was 19 years old when she initially entered the United States in November, 1981 and thus a minor, and that her maternal aunt, [REDACTED] (since deceased) arranged for the travel documents. The applicant asserts that she had no idea that the passport was not her own until March, 1988 when she “noticed that it bore [her] picture but under another person’s name.” Upon realizing that she had repeatedly traveled with false documents, the applicant avers that she “immediately made a decision to go back to the Philippines and apply for [her] own visa since [she] was already passed [sic] 22 years old at that time.”

The applicant also asserts that she was the victim of unfortunate circumstances as regards the actual preparation and mailing of her I-687 application package. The applicant states in her affidavit that she met one [REDACTED] in January, 2005, who suggested that she take advantage of the “new amnesty program through the CSS/Newman case.” Mr. [REDACTED] is alleged to have informed the applicant of the residency requirements and offered to assist her in the preparation of her application for a fee of \$4,500 dollars. The applicant states that she paid [REDACTED] the requested fee and was given an envelope with an INS address on it and instructed to mail it from Carson, CA.

In further support of her appeal, the applicant submits an amended affidavit from her uncle, [REDACTED], and a new affidavit from another aunt, [REDACTED]. The AAO notes that the second affidavit submitted by [REDACTED] contains much **more detailed information** regarding the circumstances surrounding the applicant’s entry and residence in the United States. The amended affidavit essentially confirms the applicant’s story regarding the false passport and the circumstances surrounding the preparation and mailing of her application for temporary residence. Mr. [REDACTED] states also that the applicant cannot be held responsible if she was given the wrong envelope to mail by [REDACTED]. Likewise, the affidavit from the applicant’s aunt [REDACTED] essentially conforms to the information contained in [REDACTED]’s second, amended affidavit as well as the applicant’s sworn statement on appeal. Both affiants swear that the applicant resided continuously in Edison, NJ., with her aunt [REDACTED] from November of 1981 until sometime in late April of 1988, with two brief visits to the Philippines for Christmas. Both affiants claim that the applicant, upon “discovering” that her travel documents were fraudulent, returned to the Philippines in late April of 1988 to procure a new, valid passport and entry visa. Both affiants state that the applicant remained in the Philippines, married in 1989, and proceeded to have three children, and did not return permanently to the United States until sometime in March of 2003.

The AAO has reviewed the applicant’s sworn statement on appeal, the two affidavits of [REDACTED] as well as the affidavits of [REDACTED] and the applicant’s brother, [REDACTED]. The AAO has also reviewed the notes of the applicant’s interview before an immigration officer on February 15, 2006. During her interview, the applicant admitted that she used another person’s passport when she allegedly first entered the United States in November, 1981. She also confessed that she traveled with fraudulent documents on at least two other occasions in 1983 and 1987. She stated that her brother [REDACTED] and her Uncle [REDACTED] picked her up at the land border, and transported her to Edison, NJ., where she lived with her brother. However, the applicant

states in her declaration on appeal that her aunt presented the false travel documents to immigration officials at Newark International Airport upon her arrival, and that she later met her Uncle [REDACTED] at a family reunion. There is no mention of the applicant's brother and uncle meeting her at the airport. Additionally, the applicant stated during her interview that she lived with her brother. The affidavits submitted by the applicant's brother and her Uncle [REDACTED] that accompany the original application for temporary residence affirm that the applicant lived with her brother at [REDACTED] Edison, NJ. However, Mr. [REDACTED]'s amended affidavit affirms that the applicant lived with her aunt. Furthermore, during the applicant's interview, she could not identify the names of any streets in the vicinity of [REDACTED] Edison, NJ., despite her claim that she lived there for over seven years.

Because of these discrepancies of record and in view of the applicant's admission of fraud, the AAO finds that the applicant cannot establish by a preponderance of the evidence that she resided unlawfully in the United States for the requisite period of time. The applicant does not identify how she supported herself after her initial alleged entry in 1981 except to state on her application that she was "self-employed." Also, her explanation that she was completely ignorant of the fraudulent travel documents because she was a minor is not persuasive. The AAO notes that the applicant was not a child at this particular point in time, but rather, almost an adult at 19 years of age. By engaging in such an action, the applicant has seriously undermined her own credibility as well as the credibility of her claim of continuous residence in this country for the requisite period. Furthermore, the record on appeal does not contain any documentary evidence of the original entry documents. However, the record includes copies of two passports issued on September 8, 1997 and February 18, 2002, and a visa for multiple entries into the United States with a date stamp entry of March 14, 2001.

Also, the applicant's explanation regarding the El Centro postmark is not convincing. She asserts that she followed the instructions of [REDACTED] and mailed the package that was given to her from Carson, CA. She claims no responsibility for the fact that her true application package was actually mailed from El Centro, CA, approximately three hours distant. The AAO finds that the applicant signed the Form I-687 and is responsible for the contents of that form. The inconsistencies between her application, interview, and affidavits casts doubt on the probative value of the proof she offers in support of her claim of continuous residence.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of her application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The applicant has failed to provide any such evidence.

The absence of probative and credible documentation and the conflicting evidence and contradictory claims in the record seriously undermine the credibility of the applicant's claim of residence in this country for the requisite period, as well as the credibility of the documents submitted in support 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. The applicant has failed to submit sufficient credible documentation to meet her burden of proof in establishing by a preponderance of the evidence that she has resided 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-*, 20 I&N Dec. 77 (Comm. 1989). 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.