



U.S. Citizenship
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FILE:

MSC 05 201 13686

Office: LOS ANGELES

Date:

JUN 09 2008

IN RE:

Applicant:

APPLICATION:

Application for Status as a Temporary Resident pursuant to Section 245A of
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. All documents have been returned to the office that decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

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 dismissed.

The district director denied the application finding that the applicant failed to establish class membership and continuous residence during the requisite period. Here, the director adjudicated the Form I-687 application on the merits. As a result, the director is found not to have denied the application for class membership.

On appeal, the applicant provided additional evidence and asserted that the evidence now in the record shows that she resided in the United States for the requisite period.

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 Immigration and Nationality Act (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, “[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 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 regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant’s employment must provide the applicant’s address at the time of employment, identify the exact period of employment, show periods of layoff, state the applicant’s duties, declare whether the information was taken from company records, and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

The evidence pertinent to the applicant’s claim of continuous residence in the United States during the requisite period is described below.

- The record contains an undated affidavit from [REDACTED] of Wilmington, California with an undated notary’s attestation. That affidavit states that the applicant worked for the affiant from “February 1985 to present.” That letter does not conform to the requirements of 8 C.F.R. § 245a.2(d)(3)(i) pertinent to letters from employers, which diminishes its credibility. Further, because it is undated, this office cannot determine the period during which the affiant is stating that she employed the applicant. Further still, for a notary public to fail to date an attestation is very unusual. Because of this irregularity in the attestation, the failure of the letter to conform to the pertinent regulation, and the failure to specify the period of employment the affiant is attesting to, that affidavit is accorded no evidentiary weight.

The record contains an undated affidavit from [REDACTED] of Compton, California with an undated notary’s attestation. Again, that letter does not conform to the requirements of 8 C.F.R. § 245a.2(d)(3)(i). Further, that affidavit states that the applicant worked for the affiant from March 1982 until 1984, but does not state that the employment was in the United States, nor is it accompanied by any evidence that the affiant then lived in the United States. Further still, for a notary public to fail to date an attestation is, as was noted above, very unusual. Because of this irregularity in the attestation, the failure of the affidavit to conform to the relevant regulation, and its failure

to specify the location of the employment the affiant is attesting to, that affidavit is accorded no evidentiary weight.

- The record contains an undated form affidavit from [REDACTED] with an undated notary's attestation. Although that affidavit states that the affiant is "currently" living in the United States, the date that document was produced is unknown. A preprinted portion of that document states, "I have firsthand knowledge of continuous [sic] residence in the United States since 1981 until the present time." Yet again, for a notary public to fail to date an attestation is very unusual.¹ Further, the entire affidavit is preprinted except for the affiant's name, the city and county of her current residence, the salient dates, and the affiant's signature. The affiant signed that document without providing any other details pertinent to her relationship to the applicant or the basis of her "firsthand knowledge." Because of the irregularity in the attestation, the fill-in-the-blanks nature of the affidavit, and the lack of detail, that affidavit is accorded no evidentiary weight.
- The record contains an affidavit, dated January 14, 2006, from [REDACTED], and a copy of her driver's license. Although the driver's license gives a Fontana, California address when it was issued during 2002, it does not demonstrate that the affiant lived in the United States at any time during the period of requisite residence. Further, although that affidavit states that the affiant has known the applicant for 23 years, it does not state when or whether the applicant lived in the United States. It is of no value in demonstrating that the applicant resided in the United States during the period of requisite residence.
- The record contains an affidavit from [REDACTED], then of South Gate, California, dated January 16, 2006. That affidavit is in Spanish, and is accompanied by a purported English translation and a photocopy of [REDACTED]'s California driver's license, which will expire in February 2010.

In the letter in Spanish, the affiant states that she has known the applicant since 1986 and through the present date, and that the applicant began working for her during October 2005. The translation amended that statement to, "I, have known [the applicant] since 1986 to October 2005. She was working with me doing housework in my house." The mistranslation thus implies that the applicant has worked in the United States since 1986, rather than beginning in October 2005, as the original letter indicates.

This office notes, initially, that however it is construed the affidavit covers, at most, only a small portion of the period of requisite residence. Further, as rendered in translation, it does not state that the affiant lived in the United States during the period when the applicant worked for her, from 1986 to October 2005, and it is not accompanied by any evidence that the affiant lived in the United States during that period. That affidavit, as rendered in translation, is of no value in demonstrating that the applicant resided in the United States during the requisite period.

¹ All three undated attestations purport to have been placed by the same notary.

If construed as per the original, [REDACTED]'s affidavit attests that she has known the applicant since 1986, but not that the applicant was then working or living in the United States. So construed, it indicates that the applicant began working in the United States no later than October 2005 and continued to work and live in the United States through January 16, 2006. Again, as so construed, it provides no evidence pertinent to the requisite period and is of no evidentiary value in this case.

The regulation at 8 C.F.R. § 103.2(b)(3) requires that all foreign language translations be accompanied by a certification by the translator that the translation is true and complete. Although such a translation accompanied the translation in the instant case, this office notes that the translation is not, in fact, true and complete.

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 the application. Further, the applicant must resolve any inconsistencies in the record with competent, independent, objective evidence. Attempts to explain or reconcile such inconsistencies, absent competent objective evidence sufficient to demonstrate where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (Comm. 1988). The incorrect translation may well have been intentional and thus casts doubt, pursuant to *Matter of Ho*, on all of the applicant's evidence.

- The record contains an affidavit, dated August 25, 2006, from [REDACTED]. The affidavit was accompanied by a copy of a portion of the affiant's Mexican passport, which was issued on December 8, 1977 in Los Angeles, California, and gives the affiant's address in Lynwood, California. The affidavit states that the affiant has known the applicant "since the early 1980's," and that she has been in the United States since that time. In addition to failing to specify the date, or approximate date, or the occasion, on which he first met the applicant, the affiant did not clearly state whether the applicant continuously resided in the United States during the requisite period, did not state his relationship to the applicant, how often he saw the applicant during the period of requisite residence, what the longest period was during which he did not see the applicant, the basis of the affiant's asserted knowledge, or other details. Because of the lack of detail that document is accorded very minor evidentiary weight. That evidentiary weight is further diminished, pursuant to *Matter of Ho*, 19 I&N Dec. 582, by the inconsistencies in the other evidence submitted.
- The record contains an affidavit dated August 25, 2006 from [REDACTED]. It states that she then lived at [REDACTED] San Bernardino, California. That affidavit is accompanied by 1981 and 1982 Form 1040 U.S. Individual Income Tax Returns showing her address as [REDACTED] in Los Angeles, California; 1984 Form W-2 Wage and Tax Statements showing that the affiant then lived at [REDACTED], Los Angeles, California or, variously, at [REDACTED] in Los Angeles; a 1984 Form 1040A tax return showing that the affiant then lived at [REDACTED] in Los Angeles; and a letter from IRS, dated December 31, 1986, showing that [REDACTED] then lived at [REDACTED] in Montebello, California. [REDACTED] affidavit states,

I have known [the applicant] since the early 1982 [sic] to the present time. I met [the applicant] through her sister-in-law whom [sic] is my neighbor. I have had contact with her since her sister-in-law has always been my neighbor. Through the years I have been in family parties and visits with her family.

[REDACTED] affidavit does not indicate when, if ever, the applicant lived in the United States. The affidavit is therefore of no value in demonstrating that the applicant continuously resided in the United States during the requisite period.

Further, this office was unable to confirm the existence of some of the various addresses listed on evidence provided by the affiant to show that she lived in the United States. Mapquest.com did not confirm the existence of either Lafayette Avenue or Lafayette Park in Los Angeles, or of Roselane Avenue in Montebello, although a webpage maintained by the United States Postal Service at <http://zip4.usps.com/zip4/welcome.jsp>, accessed May 29, 2008, confirms the existence of a Rose Lane in Montebello. Further, although the USPS site confirms the existence of a La Fayette Road in Los Angeles, it is in zip code 90019, rather than 90005, the zip code provided by the affiant. Some of the affiant's claimed addresses appear not to exist.

Further still, although the affiant stated that the applicant's sister-in-law has always been her neighbor, the evidence submitted shows that [REDACTED] has moved numerous times, including moves during the period of requisite residence from [REDACTED] to [REDACTED] or possibly [REDACTED], all in Los Angeles, California, then back to [REDACTED] and then to [REDACTED], in Montebello, California, all within the period of requisite residence. This office notes that Los Angeles and Montebello are roughly 20 miles apart. Absent some remarkable and unreported circumstance, that the applicant's sister-in-law continued to be the affiant's neighbor throughout all of those moves, as the affiant claimed, is manifestly unlikely.

The anomalies in the addresses provided by the affiant and the manifest improbability of some aspects of her assertions severely damage the credibility of her testimony. Even if the affidavit attested to the applicant's residence in the United States during the requisite period, this office would accord it no evidentiary value.

Yet further, as was noted above, pursuant to *Matter of Ho*, 19 I&N Dec. 582, doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. All of the applicant's evidence is weakened yet further by the anomalies and inconsistencies of this affidavit.

- The record contains a form letter dated September 27, 1987 from la Iglesia Apostolica de la Fe en Cristo Jesus of Huntington Park, California. The preprinted portions of that form letter states,

I, the undersigned, pastor of the Apostolic Church in Huntington Park, give faith that _____ a member of our church, has been in continuous attendance to our regular services at the church whose location appears above since _____ to _____.”

The applicant’s name and the dates May 1980 to September 1987 were added to that letter.

In view of the fill-in-the-blanks nature of that letter and the other questionable evidence provided the applicant to support her claim of continuous residence during the requisite period, this office accords that letter only slight evidentiary value.

The record also contains an affidavit from _____ that attests to the applicant’s residences from 1988 through 2006. Because that period does not necessarily include any portion of the period of requisite residence,² it is of no demonstrated relevance to any material issue in this case and will not be discussed further. The record also contains various items that demonstrate that the applicant was in the United States after the requisite period, which also will not be addressed. The record contains no other evidence pertinent to the applicant’s residence in the United States during the salient period.

With her application, the applicant submitted none of the evidence of her continuous residence in the United States during the requisite period. In a Notice of Intent to Deny (NOID), dated January 21, 2006, the director stated that the evidence submitted with the application did not demonstrate her entry into the United States prior to January 1, 1982, and continuous residence during the requisite period. The director granted the applicant thirty days to submit additional evidence.

In response the applicant submitted the affidavits of _____, and _____, and the letter of _____, and associated documents, all of which are described above.

In the Notice of Decision, dated August 5, 2006, the director denied the application, finding that the evidence was still insufficient to demonstrate the applicant’s continuous residence in the United States during the requisite period.

On appeal, the applicant submitted the affidavits of _____ and _____, and the associated documents, and the form letter from the Huntington Park Apostolic Church, all of which are described above. The applicant asserted that the evidence demonstrates her eligibility.

² Pursuant to the CSS and Newman settlement agreements, the applicant’s period of requisite residence ended when the applicant filed her initial Form I-687 application, which would have occurred between May 5, 1987 and May 4, 1988, inclusive. The application may have been filed during 1987, or the residences attested to may have begun during 1988 but after March 4. In either event, the affidavit would not demonstrate any residence in the United States during the salient period.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate entry into the United States prior to January 1, 1982, and continuous residence during the requisite period. For the various reasons cited above, almost all of the evidence submitted has been found to be entirely without probative value pertinent to that determination. The two remaining items of evidence are the affidavit from [REDACTED] and the letter from the Huntington Park Apostolic Church. The credibility of the letter from the church is sharply diminished, pursuant to *Matter of Ho*, 19 I&N Dec. 582, by the anomalies in some of the other evidence submitted. [REDACTED]' letter's credibility is diminished both by its lack of specificity and by the anomalies in the other evidence submitted.

The evidence must be evaluated not by the quantity of evidence alone but by its quality. 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 little or no probative value, it is concluded that she has failed to establish entry into the United States prior to January 1, 1982, and continuous residence during 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. The appeal will be dismissed.

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