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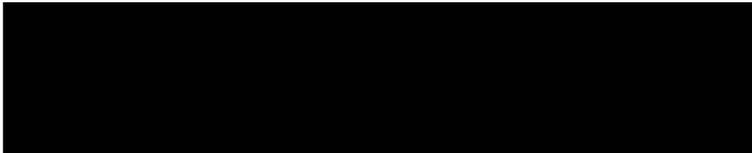
U.S. Department of Homeland Security
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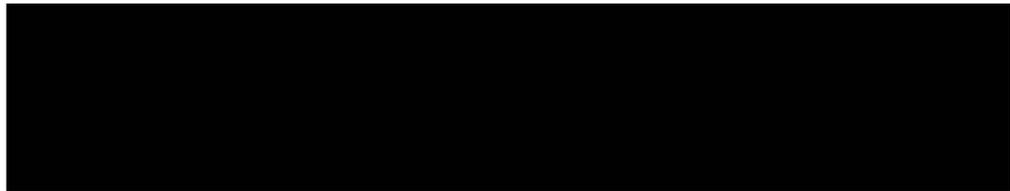


FILE: [REDACTED]
MSC-05-232-14134

Office: LOS ANGELES

Date: MAR 10 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: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the office that originally 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, 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. 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 states that she entered the United States in October of 1981. The applicant also states that she resided in the United States until her brief trip to Mexico in 1987, and that she never told the immigration officer during her interview that she resided in Mexico from 1970 to 1985.

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. See CSS Settlement Agreement paragraph 11 at page 6 and 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).

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 his burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on May 20, 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 listed her first address in the United States to be [REDACTED] Los Angeles, California, from 1994 to 1996. At part #33 the applicant indicated that she was employed by McDonalds Restaurant, Los Angeles, California, from 1989 to 1996.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted copies of her earnings statements, Internal Revenue Service tax documents, school records, children's birth certificates, identification cards, and other documentation that is dated subsequent to the requisite period, and therefore, does not support the applicant's claim of continuous unlawful residence.

The applicant submitted affidavits from [REDACTED] and [REDACTED] in which they stated that they have known the applicant since 1981, that they have become friends with the applicant, and that they have kept in contact with her. There is nothing in the record to demonstrate the frequency with which the affiants maintained communications with the applicant. Here, the affiants have not provided evidence that they themselves were present in the United States during the requisite period. Though not required to do so, the affiants have not included proof of their identity with their affidavits. Although the affiants attested to the applicant's residence in the United States since 1981, they have failed to provide any relevant and verifiable testimony, such as the applicant's address(es) of residence in this country, to corroborate the applicant's claim of residence in the United States since prior to January 1, 1982. Because the affidavits are significantly lacking in detail they

can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

The applicant also submitted an affidavit from [REDACTED] in which she stated that the applicant lived with her at [REDACTED] Los Angeles, California, in October of 1981. Here, the affiant's statements are inconsistent with the applicant's statement on her Form I-687 at part #30 where she listed her first address in the United States to be [REDACTED] Los Angeles, California, from 1994 to 1996. It is also noted that the applicant indicated on her Form I-687 application part #32 that she resided in Mexico from September of 1970 to 1985. These inconsistencies call into question the affiant's ability to confirm that the applicant resided in the United States during the requisite period. Because this affidavit contains testimony that conflicts with what the applicant showed on her Form I-687, doubt is cast on assertions made in the affidavit. 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. 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, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). This affidavit is lacking in detail and it conflicts with other evidence in the record. Therefore, no weight can be afforded to it in establishing that the applicant resided in the United States during the requisite period.

In denying the application the director stated that the applicant had failed to meet her burden of proof by a preponderance of the evidence that she had continuously resided in an unlawful status in the United States during the requisite period.

On appeal, the applicant reasserts her claim of eligibility for temporary protective status.

Here, the applicant has not provided sufficient evidence of residence in the United States prior to January 1, 1982, and has submitted minimal evidence of her presence in the country since 1985. It is noted that the affiants [REDACTED] and [REDACTED] have failed to provide detailed information on how they became acquainted with the applicant and the frequency of their contact with her throughout the requisite time period. Furthermore, the statement of [REDACTED] concerning the applicant's residence, is in conflict with the information the applicant provided on her Form I-687 application. Although the applicant was 11 years old in 1981, she failed to provide any school records to account for her presence in the United States since before January 1, 1982, and during the requisite period.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous unlawful residence in the United States throughout the requisite period seriously detracts from the credibility of this 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 contradictory statements on her I-687 application, and her reliance upon documents with minimal probative value, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States for the requisite period 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.