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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

L1

[REDACTED]

FILE:

MSC-05-173-12518

Office: NEW YORK

Date:

MAR 19 2008

IN RE:

Applicant:

[REDACTED]

APPLICATION:

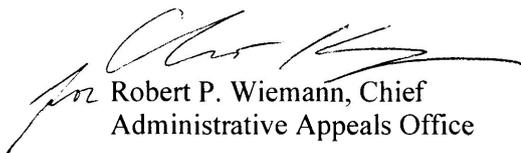
Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. 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, 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 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 claims her eligibility for temporary resident status, she requests that her application be reviewed, and she provides a telephone number for the affiant R. Nicholas.

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 her 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 March 22, 2005.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided a letter from [REDACTED] of the Pan African Church of God in Christ, Bronx, New York, in which he stated that the applicant has been a member of the church since August of 1982, and that she is an active member of the woman's fellowship ministry and is also helpful in the community. This statement is inconsistent with the applicant's statement on Form I-687, at part #31 where the applicant was asked to list all affiliations or associations, clubs, organizations, churches, unions, businesses, et cetera and the applicant did not state any affiliations. This inconsistency calls into question the declarant's ability to confirm that the applicant resided in the United States during the requisite period. Because this attestation contains testimony that conflicts with what the applicant showed on her Form I-687, doubt is cast on assertions made in the attestation. 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). In addition, the letter does not conform to regulatory standards for attestations by churches at 8 C.F.R. § 245a.2(d)(3)(v). Specifically, the letter does not state the address where the applicant resided during the alleged membership period, nor does it establish the origin of the information being attested to. It is further noted that the letter does not support the applicant's contention that she was present in the United States before January 1, 1982. Because this letter does not conform to regulatory standards, and because it conflicts with other evidence in the record and is lacking in detail and probative value, it can be accorded only minimal weight in establishing that the applicant resided in the United States since August of 1982.

The applicant also submitted an affidavit from [redacted] in which she stated that she has known the applicant since 1981, that they met at the hospital, and that they were both church members at the Assumptionism Place Church. This statement is inconsistent with the applicant's statement on Form I-687, at part #31 where the applicant listed no affiliation with any church. This inconsistency calls 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. The affiant has also failed to demonstrate the frequency with which she saw the applicant during the requisite period. She has not provided evidence that she herself was present in the United States during the requisite period. Though not required to do so, the affiant has not included proof of her identity with this affidavit. Although the affiant attested to the applicant's residence in this country since 1981, she failed to provide any relevant and verifiable testimony, such as the applicant's address(es) of residence in this country during that period, to corroborate the applicant's claim of residence in the United States since prior to January 1, 1982. The affidavit is lacking in detail and probative value, and therefore, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

The director issued a Notice of Intent to Deny (NOID) to the applicant on February 10, 2006. The director indicated in the NOID that the attestations submitted by the applicant were not credible or amenable to verification, and that there was no proof that the declarants had direct personal knowledge of the events and circumstances of the applicant's residency.

In response to the director's NOID, the applicant submitted an affidavit from [redacted] in which he stated that he has known the applicant since 1981 when he met her through a mutual friend at a Christmas party. He further stated that he would visit her from time to time at her [redacted] and that they kept in touch with each other periodically. The affiant also indicated that the longest period during the applicant's residency in which he did not see the applicant was 7 months. The affiant lists the applicant's address as Harlem, New York from December of 1981 to May of 1999. The affiant's statement lacks sufficient details of his relationship with the applicant. The affiant has failed to identify the mutual friend. The affiant has not provided evidence that he himself was present in the United States during the requisite period. Furthermore, the affiant has admitted to not seeing the applicant for long periods of time

during her alleged residency in the United States. The affiant has failed to provide any relevant and verifiable testimony, such as the applicant's specific address(es) of residence in this country, to corroborate her claim of residence in the United States since prior to January 1, 1982. There is nothing in the record to show that the information contained in the affidavit was based upon the affiant's firsthand knowledge of the applicant's circumstances. Because this letter is significantly lacking in detail it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

In denying the application, the director noted that the affidavit from [REDACTED] was not credible and that there was no proof that the affiant had direct personal knowledge of the events and circumstances of the applicant's residency.

On appeal, the applicant states that she was turned away at an immigration office because of her absence from the country in 1992; she requests that her application be reviewed; and she provides a telephone number for the affiant [REDACTED]. The applicant provides no additional evidence.

In the instant case, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the requisite period. It is noted that she has submitted attestations that are not credible and are in conflict with information contained in her I-687 application. The affidavits submitted are also lacking in detail. It is also noted that although the applicant indicated during her interview with a Citizenship and Immigration Services officer on February 8, 2006 that she arrived in the United States in 1981, she indicated on her Form I-589, Request for Asylum in the United States, dated September 26, 1994, part #12 that she arrived in the United States on August 14, 1990. There has been no explanation provided for the inconsistency in her statements.

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 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 applications and her reliance upon documents with minimal probative value, two of which are inconsistent with her Form I-687, 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.