

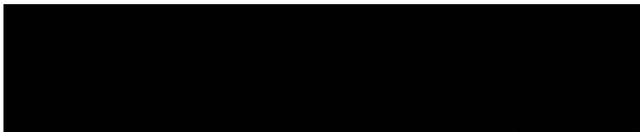


U.S. Citizenship
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Services

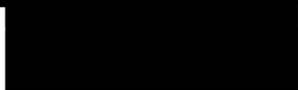
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FILE:



Office: LOS ANGELES

Date:

MAR 25 2008

MSC-06-013-12761

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. 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 remanded for further action, you will be contacted.

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. Specifically, the director noted that during the requisite period the applicant resided in Mexico. 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 has never left the United States. The applicant also explains the reasons she could not obtain the evidence the director requested.

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).

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 October 13, 2005. At part #30 of the application where applicants are 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 Panorama City, California from 1994 until 2004. The applicant left blank the other sections of her application, including the sections requesting her to list her absences from the United States since her entry and her employment in the United States since her entry. The applicant has failed to provide any information on her application of her residence in the United States during the requisite period.

The applicant submitted a variety of documents with her application. This proceeding will address only the documents that relate to the applicant’s continuous residence in the United States during the requisite period.

The applicant submitted copies of six photographs. The applicant dated three of these photographs as 1980, two of the photographs as 1982 and one photograph as 1985. The

applicant has failed to provide any concrete information regarding these photographs other than the year they were taken. There is no indication that the person featured in the photographs is the applicant. There is also no information on the location of these photographs. Furthermore, the reliability of the date of these photographs were taken appears to be based on the applicant's memory. There is no evidence that the photographs contain a date stamp issued on the date that they were either taken or developed. Therefore, these photographs are not credible and probative evidence of the applicant's residence in the United States during the requisite period.

The applicant submitted a certificate written in Spanish from Parroquia De San Matias in Huntington Park, California. The applicant has not provided an English translation of this document. Any document containing foreign language submitted to the Service shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. 8 C.F.R. § 103.2(b)(3). Therefore, this document is not reliable and probative evidence of the applicant's residence in the United States during the requisite period.

The applicant submitted a copy of an application for the birth record of her son, [REDACTED], dated stamped June 28, 1982. The applicant also submitted a copy of a State of California Certificate of Live Birth, date stamped June 29, 1982, showing that [REDACTED]'s date of birth as April 12, 1982 and place of birth as Torrance, California. These documents are credible and probative evidence of the applicant's residence in the United States in 1982.

The applicant submitted a copy of a Certificate of Marriage from the Martha Wedding Chapel, indicating that she married her husband, [REDACTED] on July 25, 1981 in California. The applicant also submitted a copy a State of California Record of Marriage, showing that she married her husband on July 25, 1981 at Martha Chapel in Los Angeles, California. These documents are credible and probative evidence of the applicant's residence in the United States prior to January 1, 1982.

The documents submitted with the applicant's Form I-687 fail to establish her residence in the United States during the *entire* requisite period. The applicant submitted documents showing that she has resided in the United States prior to January 1, 1982 until June 29, 1982. The applicant did not provide any other reliable, credible and probative documentation of her residence in the United States during the requisite period.

On April 19, 2006, the applicant was interviewed at the Los Angeles District Office for her eligibility for temporary resident status. The applicant's record shows that the immigration officer took a sworn statement from her son, [REDACTED]. This sworn statement provides, "I was in Mexico when I attended first and second grade and then I was brought to the U.S.A. and continued on to 3rd grade and up. My mom was with me during 1st & 2nd grade." This sworn statement is not indicative of the applicant's absence from the United States during

the requisite period. [REDACTED] date of birth is April 12, 1982. Children generally attend the first grade when they are six years old. The Los Angeles Unified School District's website provides that a child may enroll in kindergarten if he will turn five years old on or before December 2nd of the year of registration.¹ Without any other information, it can only be presumed that the applicant's son would have started the first grade in Mexico at the age of six in September 1988. This date is outside of the applicant's requisite period of continuous residence in the United States. Therefore, the sworn statement of [REDACTED] does not have any bearing on this proceeding.

The record shows that subsequent to the applicant's interview the immigration officer issued a Form I-72 requesting "[y]our original childhood vaccination card." Presumably, the immigration officer was requesting the childhood vaccination card of the applicant's son, [REDACTED] since the applicant's childhood vaccination card would be irrelevant to this proceeding.

The record is unclear as to whether the applicant responded to the immigration officer's request for a childhood vaccination card. It should be noted that the applicant filed with her Form I-687 a copy of [REDACTED]'s Immunization Record issued from the Van Nuys Health Center in Van Nuys, California. This immunization record shows the earliest date [REDACTED] received a vaccination as October 10, 1990 at the Van Nuys Health Center. Therefore, this previously submitted record is not probative evidence of the applicant's residence in the United States during the requisite period.

On May 24, 2006, the director issued a Notice of Denial, which provides, in part:

You submitted a birth certificate of a U.S. born son in support of your continuous residence in the U.S. since prior to 1/1/82 through 5/4/88. The birth certificate can only substantiate the fact that [sic] you were in the U.S. during the time that your son was born but it has no probative value for the subsequent years. You were requested to submit your prenatal care record, and your son's immunization record. You provided the immunization record for your son, which only showing [sic] that he received vaccination shots from 1990s. You stated that the record for the earlier shots was lost or you no longer have it. You forgot [sic] to mention the time when you took your son to Mexico and allowed him to attend school there. There is evidence in the file that you were residing in Mexico shortly after you gave birth to your son. Your son started school in Mexico. You and your son returned to the U.S. after he finished second grade [sic] in Mexico. Your testimony under oath appears to be not credible.

Although the director was correct in her overall decision, the AAO notes that there are a few errors in her analysis. First, the director asserts that the applicant was requested to submit her prenatal care record. The immigration officer's Form I-72 does not show that the applicant was requested

¹ http://notebook.lausd.net/pls/ptl_apps.renderfaq.viewquestion?p_question_id=54256

to submit this document. Moreover, there is no indication in the record that the applicant ever received prenatal care. Hence, the lack of this document should not be fatal to the application. Second, the director asserts that there is evidence in the file that the applicant was residing in Mexico shortly after she gave birth to her son. The director fails to cite to this evidence, therefore, the basis for the director's assertion remains unknown. Finally, the director asserts that the applicant's son started school in Mexico. The director further asserts that the applicant returned to the United States after her son completed the second grade in Mexico. The sworn statement of the applicant's son provides that he attended the first grade and second grade in Mexico. As discussed, the applicant's son would have presumably started the first grade in September 1988. This date is outside of the requisite time period, and is therefore irrelevant to this proceeding. Nevertheless, the director's actions must be considered to be harmless error as the AAO conducts a de novo review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(d)(6).

On appeal, the applicant asserts that she went to the hospital where she took her son for his vaccinations and was informed that records are only kept for ten years. The applicant further asserts that she has never left the United States and her son went to Mexico with her mother. The applicant resubmitted all of the documentation she previously filed with her application.

Under section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2), an applicant must establish that she entered the United States before January 1, 1982, and continuously resided in the United States in an unlawful status since such date and through the date the application is filed. The term "until the date of filing" shall mean 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; Newman Settlement Agreement paragraph 11 at page 10. As noted, the applicant has provided credible and probative documentation of her residence in the United States prior to January 1, 1982 until June 29, 1982. However, the applicant has not provided any credible and probative documentation of her residence in the United States from June 29, 1982 until the date she attempted to file or was caused not to file her application during the original legalization application period. The applicant has been given the opportunity to satisfy her burden of proof with a broad range of evidence. *See* 8 C.F.R. § 245a.2(d)(3). The applicant's failure to provide credible and probative evidence to establish her continuous residence in the United States during the *entire* requisite period renders a finding that she has failed to satisfy her burden of proof, as delineated in 8 C.F.R. § 245a.2(d)(5).

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts 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 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 entire 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.

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