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FILE:

MSC 05 232 14055

Office: LOS ANGELES

Date: **MAY 19 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. 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, and 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 district director identified certain inconsistencies between the applicant's application documentation and oral testimony, given at a July 14, 2006 interview, as well as a lack of details regarding her residences during 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 attempts to clarify the oral testimony given at her interview and asserts that her own statements and the affidavit submitted in support thereof are credible. The applicant submits additional documentation in support of her claim.

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 until the date of filing the application. 8 C.F.R. § 245a.2(b)(1).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the alien 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.* 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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that she resided in the United States during the requisite time period. Here, the applicant has not met this burden.

At the outset, the AAO notes that with regard to the applicant's oral testimony, the record lacks sufficient documentation to fully establish what the applicant specifically stated at her interview.¹ As such, the AAO's decision will focus entirely on the documentation on record.

The record shows that the following documentation has been submitted in support of the applicant's claim of continuous residence in the United States during the statutory period:

1. A photocopy of a notarized statement dated July 16, 1982, signed by [REDACTED] who stated that he had been living with the applicant for two years and considered her his common-law-wife.
2. A photocopy of the applicant's Texas identification card showing the applicant's residential address as [REDACTED], Houston, Texas and an expiration date in the year 1983. There is no issue date on this card and the applicant's date of birth is shown as April 25, 1948 rather than 1945 as indicated in both of the applicant's Forms I-687.
3. An affidavit dated April 22, 2005 from [REDACTED] who claimed that she had known the applicant since 1981. She further stated that she and the applicant resided in the same

¹ The record contains only the interviewer's notes of the interview. There is no signed statement from the applicant firmly establishing that the director's notes are an accurate interpretation of the applicant's statements.

apartment complex named [REDACTED] located at [REDACTED] Houston, Texas. The affiant did not clarify the dates of their purported residence at the common apartment complex. Furthermore, the record shows that the applicant had completed two Form I-687 applications—the first application was completed in 1994 and the application currently being adjudicated was filed on May 20, 2005. It is noted that on the first Form I-687 the applicant completed in 1994, the applicant indicated that her address from January 1981 through March 1984 was [REDACTED] Houston, Texas and on the second Form I-687 filed in 2005, the applicant gave no specific address for the years 1981-1999. As such, this supporting affidavit is inconsistent with the applicant's own claim. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The inconsistency between the affiant's statement and the applicant's claim significantly detracts from this affidavit's probative value as well as the claim itself.

4. A photocopied birth certificate of the applicant's son, [REDACTED]. The document was issued on December 5, 1983 by the State of Texas and shows that the applicant's son was born on January 26, 1983 in Houston, Texas.

On September 13, 2006, the director denied the application, specifically finding that [REDACTED] affidavit was inconsistent with the applicant's oral testimony and ultimately concluding that the applicant had failed to establish her continuous unlawful residence in the United States during the requisite time period. Regardless of the applicant's oral testimony, the documentation on record is supportive of the director's general finding that [REDACTED]'s written statement is inconsistent with information provided by the applicant, as discussed above. Further, it is noted that the applicant provided inconsistent information in her Form s I-687 regarding her absences from the United States. In her first Form I-687, the applicant listed a trip to Mexico in December 1987, whereas in the second Form I-687 no absences at all were reported.

On appeal, the applicant asserts that the director misinterpreted her interview responses, claiming that she told the interviewer that she met [REDACTED] in 1981 and that she resided in the same apartment complex as [REDACTED] "to 1985." However, as previously stated, even if the AAO were to disregard the director's interpretation of the applicant's oral testimony, the information provided by the applicant is inconsistent with the information provided by [REDACTED]

In summary, while the applicant has provided contemporaneous evidence of residence, such documents only establish the applicant's presence in the United States during certain periods prior to 1984. While an affidavit is an acceptable form of evidence, any affidavit submitted in support of the applicant's claim must, at the very least, be consistent with the information provided by the applicant. In the present matter, the applicant has provided a single deficient affidavit to account for her residence in the United States for the remaining portion of the statutory period. In addition, the applicant has failed to provide any satisfactory explanation or evidence to reconcile the inconsistencies in the record regarding her

residences in and absences from the United States during the statutory period. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The absence of credible and probative supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, as well as the inconsistencies noted in the record, 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 inconsistencies in the record and the applicant's reliance upon a single document with minimal probative value, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the date she attempted to file a Form I-687 application as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E-M-*, 20 I&N Dec. 77. 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.