



U.S. Citizenship
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FILE:

MSC 05 348 12832

Office: NEW YORK

Date:

MAY 27 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:

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, New York, 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 and denied the application on this basis, 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.

While the AAO concurs with the director's overall conclusion, it is noted that the director placed undue emphasis on the applicant's failure to submit evidence of her initial entry into the United States without giving proper consideration to the claim that the entry was unlawful. Nevertheless, the record as presently constituted suggests that the adverse decision issued by the director was warranted insofar as it was based on the applicant's failure to meet her burden of proof regarding her claimed residence in the United States during the requisite period. A full discussion is provided below.

On appeal, counsel for the applicant disputes the director's finding, asserting that sufficient credible evidence has been submitted to support the applicant's 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 director properly determined that the applicant failed to meet this burden.

The record shows that the applicant failed to submit evidence in support of her application at the time of filing. Accordingly, on November 15, 2005, the director issued the first of two notices of intent to deny (NOID). In response, the applicant provided a number of irrelevant documents that did not pertain to the statutory period, including a 2001 birth certificate of her daughter; her 1989 State of New York identification card; 1991, 1996, and 1997 bank documents; and several statements that also failed to account for the applicant's residence in the United States during the relevant time period. The applicant did, however, provide two relevant statements that will be specifically addressed. The first is an affidavit, dated November 30, 2005, from [REDACTED] the applicant's sister, who claimed that the applicant entered the United States on April 23, 1981. The affiant stated that the applicant had no choice but to work in the United States in order to support her family and pay for the medical expenses that accrued as a result of their mother's illness. The affiant did not indicate that she herself was in the United States during the same time period. As such, it is unclear whether this affiant's attestations are based on her own personal knowledge. Additionally, the affiant failed to provide any details about the events and circumstances of the applicant's purported residence in the United States during the relevant time period.

The applicant also provided a letter dated November 28, 2005 from [REDACTED] who claimed that the applicant used to rent his apartment in Elmhurst in April 1981 when she first came to the United States.

However, this individual did not provide the specific address where this apartment was located nor did he state how long the applicant continued to rent this apartment. As such, this general statement cannot be verified with any of the information provided by the applicant in her Form I-687 application.

On June 19, 2006, the director issued the second NOID informing the applicant of her failure to submit sufficient evidence to support her claimed unlawful residence in the United States during the statutory period. More specifically, the director noted that [REDACTED]'s statement did not include a contact phone number where he could be reached and was not accompanied by any identification.¹

In response, the applicant provided a letter dated July 14, 2006 from counsel, who provided a list of the applicant's residences and claimed employers in the United States. It is noted that counsel's list of residences suggested that the applicant's first residence commenced in May 1981. This information, however, is inconsistent with the applicant's claimed date of arrival to the United States, which, according to the applicant, was in April 1981. Counsel also claimed that from May 1981 until June 1989, the applicant was self-employed as a vendor. However, No. 33 of the applicant's Form I-687, which asks the applicant to provide a comprehensive list of her employers in the United States, does not indicate that the applicant was ever self-employed as a vendor as counsel claimed. Accordingly, it is noted that without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Furthermore, the fact that counsel's claims are inconsistent with the information provided by the applicant casts further doubt on counsel's statements as well as the veracity of the applicant's claim. See *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

On September 20, 2006, the director issued a final notice denying the applicant's Form I-687. As previously noted, the director determined that the applicant failed to provide sufficient evidence to support her claim.

On appeal, counsel resubmits documentation that the applicant had previously submitted, claiming that the statements from [REDACTED] and [REDACTED] are sufficient to establish the applicant's residence in the United States during the statutory period. However, counsel's assertion lacks merit in light of the fact that only two out of the five statements actually addressed the applicant's presence in the United States during the relevant statutory period. While the duplicate documentation is accompanied by photo identification of the two individuals whose statements did address the relevant time period, both statements lack probative value. As stated above, Ms. Lim failed to establish whether she was in the United States as of April 23, 1981 and thus failed to establish that she had the personal knowledge to attest to the applicant's claim regarding her entry into and residence in the United States during the statutory period. [REDACTED]'s statement is also deficient in that he failed to provide relevant information, including the address where the applicant purportedly resided

¹ It is noted for the record that the director erroneously referred to [REDACTED]'s statement as an affidavit. As the statement was not made under oath and was not notarized, it cannot be deemed an affidavit. However, as the director's erroneous reference is not material to the basis for denial, it need not be addressed further.

during the entire statutory period, to support the applicant's claim. [REDACTED]'s failure to provide the applicant's residential address during this time period is particularly questionable in light of his claim that the applicant rented an apartment from him in 1981.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period, and has submitted deficient statements from only two people concerning that period.

The absence of sufficiently detailed supporting 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 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 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.