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FILE:



Office: LOS ANGELES

Date: **NOV 05 2008**

MSC-05-201 14456

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 director of the Los Angeles office. 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. The director noted several inconsistencies between the applicant's statements and the documents she presented.

On appeal, counsel for the applicant asserts that the applicant established her eligibility for temporary resident status. The applicant provides a written statement in Spanish, with certified English translation, in an attempt to explain inconsistencies identified by the director.

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).

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) 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 April 19, 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 only the following address during the requisite period: [REDACTED], Pico Rivera, California from July 1981 to September 1989. At part #32 where applicants were asked to list all absences from the United States since entry, the applicant listed the following trips to Mexico during the requisite period: A trip to visit her mother from June 20, 1987 to July 30, 1987. At part #33 where applicants were asked to list all employment in the United States since entry, the applicant stated “None.”

In an attempt to establish continuous unlawful residence in this country throughout the requisite period, the applicant provided voluminous documentation, much of which does not relate to the requisite period. The applicant provided school documents and attestations that relate to the requisite period.

The applicant provided a copy of an identity card from the South Gate Community Adult School in South Gate, California. The document indicates that it expired in February 1988. It lists the applicant's name, and provides the following address for her: [REDACTED], South Gate, California. This information is inconsistent with the applicant's Form I-687, which indicates that she resided at the [REDACTED] address throughout the requisite period and until September 1989. This inconsistency casts some doubt on the applicant's claim to have resided in the United States throughout the requisite period.

The applicant also provided a copy of a certificate from South Gate Community Adult School issued to her and dated April 2, 1987. The document states that the applicant has been promoted to level 1B of English as a Second Language. This document constitutes some evidence that the applicant resided in the United States during the period immediately prior to April 1987.

The applicant provided an affidavit from [REDACTED], which states that the affiant has been an acquaintance of the applicant. The affiant stated that the applicant was her neighbor in Pico Rivera in 1982, and "at sometime [sic] she would baby-sit for my mother." This information is somewhat inconsistent with the applicant's Form I-687, where she failed to indicate that she worked as a babysitter during the requisite period. In addition, this affidavit lacks detail regarding the nature and frequency of the affiant's contact with the applicant, and when and how they met. Lastly, this declaration fails to specifically state that the applicant resided in the United States at any time other than during 1982. Considering these deficiencies, this document will be given only nominal weight in establishing that the applicant resided in the United States during 1982.

The applicant provided a form affidavit from [REDACTED], of [REDACTED]. The affidavit indicates that the applicant was employed by [REDACTED] from August 1987 to February 1991 as a salesperson. The affidavit also lists the applicant's address as [REDACTED] South Gate, California. The affidavit does not conform to regulatory standards for letters from employers as stated in 8 C.F.R. § 245a.2(d)(3)(i). Specifically, the affidavit does not include the applicant's address at the time of employment, whether or not the information was taken from official company records, where the records are located, and whether CIS may have access to the records. In addition, the affidavit conflicts with the applicant's statements on her Form I-687, where she failed to list employment with [REDACTED]. Therefore, this affidavit will be given only nominal weight in establishing that the applicant resided in the United States from August 1987 to the end of the requisite period.

The applicant provided a form affidavit from [REDACTED] dated September 31, 1995. The affidavit indicates that the applicant was employed by [REDACTED] from August 1981 to April 1987 as a babysitter. The affidavit also lists the affiant's address as the [REDACTED] address. The affidavit does not conform to regulatory standards for letters from employers as stated in 8 C.F.R. § 245a.2(d)(3)(i). Specifically, the affidavit does not include the applicant's address at the time of employment, whether or not the information was taken from official company records, where the records are located, and whether CIS may have access to the

records. In addition, the affidavit conflicts with the applicant's statements on her Form I-687, where she failed to list employment as a babysitter. The affiant failed to provide any detail regarding when and how he met the applicant, and their frequency of contact during the requisite period. The affiant also failed to indicate that he is the applicant's brother. Considering this lack of detail, the affidavit will be given only limited weight in establishing that the applicant resided in the United States from August 1981 to April 1987.

The applicant provided an affidavit dated September 1, 2005 from [REDACTED] which states that the applicant is the affiant's sister and resided with him at the [REDACTED] address from July 1981 to September 1989. Considering that [REDACTED] is the applicant's brother, this affidavit is lacking in detail regarding how the affiant dates the beginning of the applicant's residence, the fact that the applicant worked for the affiant as a babysitter during the requisite period, and the applicant's absences from the United States during the requisite period. Still, it constitutes some evidence that the applicant resided in the United States throughout the requisite period.

The affidavit from [REDACTED] dated September 2, 1995 states that the affiant has known the applicant since December 1981, they met through mutual friends, and they have "always" kept in touch. The affiant stated, "That I know that she has resided in an unlawful status since then." This affidavit lacks detail regarding the origins of the affiant's knowledge of the applicant's periods of residence, the region where the applicant resided, and the nature and frequency of her contact with the applicant during the requisite period. Therefore, this affidavit will be given only nominal weight in establishing that the applicant resided in the United States during the requisite period.

The applicant provided an affidavit from [REDACTED], which states that the affiant took the applicant to Tijuana, Mexico on June 20, 1987. This affidavit fails to specifically state that the applicant resided in the United States during the requisite period. Therefore, it will be given no weight in establishing that the applicant meets the residency requirements for temporary resident status.

In denying the application, 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 noted several inconsistencies between the applicant's statements and the documents she presented. Specifically, the director indicated that the applicant stated that she met affiant [REDACTED] in 1986 and met her through the applicant's sister-in-law. However, [REDACTED] stated in her affidavit that she met the applicant in December 1981 through mutual friends. In addition, the director indicated that the applicant stated that she worked with affiant [REDACTED] from 1989 to 1990, yet [REDACTED]'s affidavit states that the applicant worked for him from August 1987 to February 1991. These inconsistencies cast serious doubt on the applicant's claim to have resided in the United States throughout the requisite period.

On appeal, counsel for the applicant asserts that the applicant established her eligibility for temporary resident status. The applicant provides a written statement in Spanish, with certified English translation, in an attempt to explain inconsistencies identified by the director. The applicant stated that the officer stated to the applicant that she had told an officer at an appointment in 1995 that she entered the United States in 1987 instead of 1981. The applicant stated that the officer was trying to confuse her, and the applicant felt nervous because the officer did not believe her. The applicant stated that the officer treated her badly.

It is noted that the record contains a sworn statement written in Spanish and signed by the applicant on September 6, 1995, which states that the applicant entered the United States for the first time in 1987. This information casts serious doubt on the applicant's claim to have resided in the United States throughout the requisite period. The applicant's statement on appeal is insufficient to overcome her written statement from 1995. 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 applicant has failed to provide sufficient credible and relevant evidence to overcome her prior statement conflicting with her claim of continuous residence, and to overcome the other inconsistencies identified in the record.

In summary, the applicant has provided contemporaneous documents that are somewhat inconsistent with her statements on her Form I-687 application. She has provided attestations that are inconsistent with her Form I-687 application, lack sufficient detail, do not conform to regulatory standards, or fail to state that she resided in the United States during the requisite period. She has provided minimal contemporaneous evidence of her residence in the United States immediately prior to April 1987, and she has provided two attestations of limited weight in establishing that she resided in the United States from 1981 to 1987. The absence of sufficient detailed and credible 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 contradictions between the applicant's Form I-687 and the documents she submitted, her prior statement indicating that she first entered the United States in 1987, 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.