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FILE:

MSC 06 098 12500

Office: DENVER

Date: NOV 12 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 Director, Denver, Colorado. 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) on January 6, 2006. The applicant was interviewed on August 1, 2006. The director denied the application on September 20, 2006.

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).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "until the date of filing" shall mean 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 periods, 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 applicant 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 (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 establish her entry into the United States prior to January 1, 1982 and continuous unlawful residence since such date through the requisite period. On the Form I-687, the applicant lists her date of birth as May 20, 1973. The Form I-687 in the file contains a number of incomplete or partially complete answers to the questions and annotations in red ink completing the necessary information. The annotation on the Form I-687 indicates the applicant's last entrance into the United States was on a J-2 visa. The typewritten portion of this question indicates the entry was in June 2002. The annotation on the Form I-687 for the pertinent time period lists the applicant's address as: [REDACTED] from 1981 to 1988. Although the Form I-687 has "N/A" typed in response to a question regarding the applicant's absence from the United States, the annotation indicates the applicant left the United States in December 1987 and returned in January 1988.

The record contains the following documents submitted on the applicant's behalf:

- A letter dated July 23, 2006 signed by [REDACTED] certifying that the letter-writer has known the applicant since June 1981 to the present time.
- A letter signed July 22, 2006 by [REDACTED] indicating that he knew the applicant through her father and that at the time he met her father he was employed in Loveland-Ft. Collins, Colorado. Mr. [REDACTED] indicates further that he met the applicant's father when her father was working seasonally in Colorado. Mr. [REDACTED] indicates he traveled to California many times because he has family in California and that he has known the applicant since 1981 when he visited the applicant's family in California.
- An affidavit dated July 14, 2006 signed by [REDACTED] stating he had known the applicant since 1981 through her family.
- A document dated July 15, 2006 signed by [REDACTED] stating that to his personal knowledge, the applicant resided at: [REDACTED], Chicago, Illinois from 1974 to 1982; [REDACTED] Chicago, Illinois from 1982 to 1985; and [REDACTED] Chicago, Illinois from 1985 to 1989. The letter-writer also states that he met the applicant's family "during frequent visits to family members in California during the period between 1981 until 1988 when they go back to Spain because their application was rejected by INS."

- An affidavit dated July 23, 2006 signed by [REDACTED] who declares that the applicant's family lived with her at [REDACTED], Paramount, California from 1981 to 1988.

In the September 20, 2006 decision, the director noted that the applicant had stated in sworn testimony: that she entered the United States with her family through the Calexico border in Mexico; that she lived in Paramount, California from 1981 to 1988; that she was home schooled while in the United States; that she and her family made a one-month trip to Mexico and then returned to Spain where she finished high school and began taking college courses until her return to the United States as a J-1 visa holder on an exchange program.

The director also noted: (1) that although [REDACTED] stated in her letter that she had known the applicant since June 1981, the interviewing officer spoke with her by phone and Ms. [REDACTED] indicated she had met the applicant seven years ago and thought the applicant lived in Arizona; (2) that the interviewing officer also spoke with [REDACTED], the applicant's claimed landlord for the time period between 1981 and 1988, and that [REDACTED] indicated the applicant and her family lived in a guest house on her property and that the applicant and her siblings attended public school in Paramount, California while the applicant lived in California; and (3) that the other affidavits and letters submitted on the applicant's behalf contained inconsistencies with the applicant's testimony or provided only general information regarding the applicant's residence for the applicable time period.

The director determined that the applicant had given conflicting testimony under oath and had not provided credible testimony or documentary evidence establishing her residency from prior to January 1, 1982 to May 4, 1988.

On appeal, the applicant provides a statement, wherein she indicates that she has not been considered a valued member of the community even though she tried to submit a letter from her pastor as well as evidence she was a volunteer, and had proof of her outstanding performance as a paraprofessional teacher, at her interview. The AAO observes: that the applicant's work as a volunteer is for the 2005-2006 season; and the affidavit from the applicant's pastor is actually from the pastor's wife, is dated September 22, 2005, the church is located in Colorado, and the letter does not provide any information regarding the periods of time the pastor's wife knew the applicant. As neither of these documents concern the requisite time period from prior to January 1, 1982 to May 4, 1988, these documents do not assist in establishing the applicant's residence for the pertinent time period and thus are not probative.

The applicant also submits a letter from her mother and from her father stating that the applicant's family lived in California from 1981 to 1988, that the applicant was home schooled, that the family traveled to Mexico during Christmas of 1987, that in April of 1988 they attempted to apply for legalization but the application was rejected, and that in the summer of 1988 they decided to return to Spain.

The applicant also submits revised letters and affidavits in support of her claim:

- An affidavit dated November 18, 2006 signed by [REDACTED] who again states he met the applicant's father in church when the applicant's father was working in

Colorado and that the affiant and the applicant's family had family functions together. The affiant states: "[t]o the best of my knowledge [the applicant] has lived in California since 1981, and has traveled occasionally to see family and friends ... "

- An undated letter signed by [REDACTED] show states that he first met the applicant in 1981 through her father during frequent visits to family members in California and that he knows that the applicant's family lived in California from 1981 to 1988.
- An affidavit dated October 17, 2006 signed by [REDACTED] who declares: that the applicant lived with her family at the affiant's former address in Paramount, California; that when the immigration officer asked about the applicant's schooling she based her answer on common sense but did not remember at that time that the applicant had been home schooled, and that it was hard for the affiant to remember exactly regarding the applicant's schooling because she had several tenants in the past and was mistaking her for someone else.

The AAO finds that the applicant has not established her entry into the United States prior to January 1, 1982 and continuous unlawful presence in the United States for the requisite time period. The AAO has reviewed the submitted affidavits and does not find them probative. The record does not contain an explanation for the significant inconsistencies between the two documents signed by [REDACTED]. Moreover, neither affidavit provides sufficient concrete information regarding the events and circumstances of [REDACTED] initial meeting with the applicant and any subsequent interactions with her. The applicant has not attempted to explain the statements in the letter signed by [REDACTED] and her subsequent different recollection when interviewed by an immigration officer. The affidavit signed by [REDACTED] does not provide details of the affiant's meeting with the applicant and subsequent interactions with her. Likewise, neither of [REDACTED]'s letters offers adequate explanations regarding his actual knowledge of the applicant's family continuous residence in the United States when the applicant's family lived in California and [REDACTED] lived in Colorado during the requisite time period. Similarly, in her revised affidavit [REDACTED] acknowledges that she finds it hard to remember the details of the applicant's schooling because she may have confused her with someone else. Such an acknowledgement undermines either version of her memory regarding the applicant's residence in the United States during the requisite time period. The AAO observes that the letters submitted by the applicant's mother and father are not affidavits, are self-serving and do not contain any documentary evidence that either of these individuals actually resided in the United States during the requisite time period.

The documents submitted contain general information and do not contain the detail of the circumstances and events surrounding the affiants' and the applicant's acquaintance. The documents do not disclose concrete detail of how the affiants met the applicant or of interactions subsequent to meeting the applicant. The documents do not establish that the affiants or letter-writers were in the United States during the requisite time period. The AAO finds the absence of detail surrounding the circumstances of these individuals' relationship with the applicant detracts from the probative value of these documents. These documents do not assist in establishing the applicant's entry into the United States prior to January 1, 1982 and continuous unlawful residence in the United States for the requisite time period. The record

lacks any document that might lend credibility to the applicant's claim of entry and residence in the United States for the required time period.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the requisite period and the applicant's limited information regarding her continuous residence in the United States detract 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 and the applicant's reliance upon deficient documents, it is concluded that the applicant has failed to meet her burden of proof and failed to establish continuous residence in an unlawful status in the United States 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. The appeal will be dismissed.

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