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U.S. Citizenship
and Immigration
Services

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FILE:

MSC-06-082-11588

Office: LOS ANGELES

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.

A handwritten signature in black ink, appearing to be "Robert P. Wiemann".

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, 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. The director stated that during the applicant's November 9, 2006 interview with a Citizenship and Immigration Services (CIS) officer, the applicant stated that during the requisite period she was absent from the United States on two occasions: from July to August of 1981 when she gave birth to her son; and during the month of May of 1987. However, the applicant submitted a birth certificate for her son, [REDACTED], which indicates that she registered his birth in Mexico on June 22, 1982, which indicates that the applicant was absent from the United States at that time. The director noted other evidence submitted by the applicant, but stated that the applicant failed to satisfy her burden of proof. Therefore, the director determined the applicant was not eligible to adjust to temporary resident status pursuant to the CSS/Newman Settlement Agreements and denied the application.

It is noted that the director raised the issue of class membership in the decision. Since the application was considered on the merits, the director is found not to have denied the applicant's claim of class membership.

On appeal, counsel for the applicant submits a brief. In the brief, counsel asserts that the evidence the applicant previously submitted is sufficient to meet her burden of proof. Counsel states that the applicant's testimony at the time of her interview was consistent with what she indicated on her Form I-687 application. She submits additional evidence for consideration.

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) 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 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 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 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 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 a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on December 21, 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 indicated that she resided in Los Angeles on South

from June 1980 to June 1990. At part #32 where the applicant was asked to list all of her absences from the United States, she indicated that she was absent once during the requisite period, when she traveled to Mexico in May 1987 because of a family emergency. At part #33, where the applicant was asked to list all of her employment in the United States since she first entered, she stated that during the requisite period she was employed as a housekeeper. She stated that she first worked in Glendale for [REDACTED] from 1980 to 1981 and that she was then self-employed from 1981 to 1988.

Also in the record are the notes from the Citizenship and Immigration Services (CIS) officer who interviewed the applicant on November 9, 2006. The officer's notes indicate that the applicant stated that she was absent from the United States on two occasions during the requisite period, in 1981 to give birth to her son and in May 1987 because of a family emergency. The applicant also stated that she worked both as a babysitter and cleaning houses during the requisite period.

The record also contains a second Form I-687 that the applicant signed on December 30, 1989. At part #33 of this Form I-687, when the applicant was asked to state her residences in the United States, the applicant indicated that during the requisite period she resided: on [REDACTED] in Compton, California from July 1980 until July 1985; on Carondelet in Los Angeles from 1985 to 1987; on South Union in Los Angeles from September 1987 until December 1987 and then on [REDACTED] in Los Angeles from January 1988 until she signed this Form I-687. At part #35 of this Form I-687 application where the applicant was asked to list all of her absences from the United States, she indicated that she was absent once during the requisite period, in August 1981 when she went to Mexico to have a baby. At part #36 where the applicant was asked to list her employment in the United States since she entered, she indicated her only employment in the United States to have been as a babysitter for [REDACTED] from July 1980 until July 1985.

The applicant did not indicate her addresses of residence, her absences from the United States or her employment consistently on her two Forms I-687. While the applicant did state that she was absent twice during the requisite period, in both 1981 and 1987, and also stated that she worked both as a babysitter and cleaning houses at the time of her interview with a CIS officer, the inconsistencies regarding her addresses of residence during the requisite period is significant and was not explained during that interview. This casts doubt on the applicant's claimed addresses or residence during the requisite period.

Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. 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 the burden of proving by a preponderance of the evidence that she has resided in the United States for the requisite period. 8 C.F.R. § 245a.2(d)(5). To meet her burden of proof, an applicant must provide evidence of eligibility apart from her own testimony. 8 C.F.R. § 245a.2(d)(6). The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that an applicant may submit to establish proof of continuous residence in the United States during the requisite period. This list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts or letters. An applicant may also submit any other relevant document pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

On January 31, 2006, the director of the National Benefits Center issued a Notice of Intent to Deny (NOID) to the applicant. In the NOID, the director stated that the applicant failed to submit evidence of the following: that she entered the United States before January 1, 1982 and then resided in a continuous unlawful status except for brief absences from before 1982 until the date she (or her parent or spouse) was turned away by Immigration and Naturalization Service (INS) when they tried to apply for legalization; that she was continuously physically present in the United States except for brief, casual and innocent departures from November 6, 1986 until the date that she (or her parent or spouse) tried to apply for legalization; and that she was admissible as an immigrant. The director granted the applicant 30 days within which to submit additional evidence in support of her application.

In response to the NOID, the applicant submitted the following evidence that is relevant to her claim that she resided continuously in the United States for the duration of the requisite period:

- A declaration from the applicant, who asserts that she first attempted to file for legalization in November 1987 but was turned away after she told the immigration officer that she had traveled briefly to Mexico because of a family emergency.
- A declaration from [REDACTED], who submits a California Identification Card issued to her in 1980 and other evidence that she was present in the United States during the requisite period. The declarant states that she went with the applicant when she attempted to apply for legalization in November 1987. She asserts that the applicant was turned away when she tried to do so after she told the immigration officer that she had traveled briefly to Mexico.
- A declaration from [REDACTED] and its English translation, submitted with a photocopy of the identity page of his United States passport and evidence that the declarant was present in the United States during the requisite period. The declarant states that he met the applicant through neighbors, that she used to clean his house and that he has been friends with the applicant since 1980.

- An affidavit from [REDACTED] who submits a photocopy of her California Driver's License and states that she has known the applicant since 1980. She asserts that the applicant worked cleaning her home in Los Angeles, California from 1980 to 1981.
- An affidavit from [REDACTED] who submits a photocopy of her California Driver's License and states that she personally knows that the applicant resided on South [REDACTED] in Los Angeles, California from June 1980 to June 1990. She states that she met the applicant at a social reunion and that the longest period of time that she has not seen the applicant is for two months.
- An affidavit from [REDACTED] who submits a photocopy of his California Driver's License and states that he personally knows that the applicant resided on [REDACTED] in Los Angeles, California from June 1980 to June 1990. He states that the applicant is an acquaintance and that the longest period of time that he has not seen the applicant is for two months.
- A declaration in Spanish and its English translation from [REDACTED], who states that he met the applicant in 1981 while they were working. He states that she is a good friend.
- A declaration from [REDACTED] who states that she first met the applicant in 1981 when she lived on [REDACTED] in Los Angeles. She speaks of the applicant's moral character.
- An affidavit from [REDACTED] who states that he has been friends with the applicant since 1984. He states that the applicant formerly resided on [REDACTED]

On November 9, 2006, the director of the Los Angeles District Office issued a Request for Additional Evidence to the applicant. This request instructed the applicant to submit a letter of employment on company letterhead that included job title, duties, hours worked per week, wages, length of employment and recent check stubs. It also instructed her to submit original birth certificates for her children in Mexico with translations of these documents.

In response to this request, the applicant submitted the following:

- A birth certificate and its English translation that states that the applicant's son, [REDACTED], was born on November 8, 1972 and that his birth was registered in Mexico on April 18, 1973.
- A birth certificate and its English translation that states that the applicant's daughter, [REDACTED] was born on March 12, 1975 and that her birth was registered in Mexico on April 15, 1975.

- A birth certificate and its English translation that states that the applicant's son, [REDACTED] was born on August 7, 1981 and that his birth was registered in Mexico on June 22, 1982.
- An employment declaration from [REDACTED], who states that she has employed the applicant since April 2004. This declaration was submitted with a paycheck issued to the applicant by [REDACTED].

It is noted that the applicant also submitted additional evidence that is not relevant to her residence in the United States during the requisite period. The issue in this proceeding is whether the applicant has submitted sufficient evidence to satisfy her burden of proving that she resided in the United States for the duration of the requisite period. Therefore, evidence that does not pertain to that period is not relevant and is not discussed here.

The director denied the application for temporary residence on January 18, 2007. In denying the application, the director noted that the applicant stated at the time of her interview with a CIS officer that she only had two absences from the United States, in July or August 1981, when she left to give birth to her son, and then in May 1987 because of a family emergency. However, the birth certificate for [REDACTED] states that the applicant registered his birth on June 22, 1982 in Sinaloa, Mexico. The director stated that this indicated that the applicant was absent from the United States on that date. The director further stated that the affidavits submitted by the applicant as evidence of her residence in the United States during the requisite period failed to satisfy her burden of proof. Therefore, the director found the applicant was not eligible to adjust to temporary resident status pursuant to the CSS/Newman Settlement Agreements.

On appeal, counsel for the applicant submits a brief. In the brief, counsel asserts that the evidence the applicant previously submitted is sufficient to meet her burden of proof. Counsel states that the applicant's testimony at the time of her interview was consistent with what she indicated on her Form I-687 application. The applicant also submits additional evidence for consideration that includes the following:

A second affidavit from [REDACTED], who states that the applicant has worked for her since 2004. She asserts that she helped the applicant to locate her former employer, [REDACTED].

She asserts that she spoke with [REDACTED] and personally verified that the applicant worked for her in 1980 and 1981. She states that [REDACTED] was able to verify these dates because they coincided with the time that she moved to Glendale.

It is noted that while the applicant states on her December 21, 2005 Form I-687 that she was employed by [REDACTED] on her Form I-687 signed in December 1989, she asserted that her only employment in the United States was as a babysitter for [REDACTED] from July 1980 until July 1985. This inconsistency casts doubt on the applicant's claimed employment during the requisite period.

In summary, the applicant has not provided sufficient evidence of her continuous residence in the United States relating to the period from before January 1, 1982 until the end of the requisite period. She has also not addressed the director's assertion that the applicant's son's birth certificate, which states that the applicant was present when his birth was registered on June 22, 1982, indicates that the applicant was absent from the United States on that date.

Further, her assertions regarding her addresses of residence and her employer during the requisite period on her two Forms I-687 are not consistent, which casts doubt on her claimed residence and employment in the United States during that time.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, as well as the inconsistencies and contradictions noted in the record, seriously 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 inconsistencies in the record and 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 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.