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U.S. Citizenship
and Immigration
Services

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FILE:

MSC-06-084-12707

Office: LOS ANGELES

Date:

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IN RE:

Applicant:

APPLICATION:

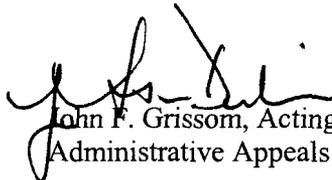
Application for Status as a Temporary Resident pursuant to Section 245A of the
Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

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.


John F. Grissom, Acting 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 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 noted in the decision that the employment letter from ██████ Child Care Center where the director indicated that the center employed the applicant from September of 1981 to 1992 was non-verifiable because the contact number was a non-working number. The director also noted the discrepancies that exist between the information provided by the above noted employer and the statements made by the applicant on her I-687 application at part #33, where the applicant indicated that she was self-employed from 1981 to 1997. The director further noted that the applicant submitted a letter dated November 7, 1996 from the Social Security Administration which showed that she had applied for a social security card. The director denied the application finding that the applicant had not met her burden of proof and that she was therefore not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, the applicant asserts her claim of eligibility for temporary resident status and states that each piece of evidence she has submitted should be considered independent of each other. She asserts that her application should not be denied because her former employer's phone number is a non-working number. She asserts that she used different social security numbers due to her unlawful status during the requisite period, and that the Seventh Day Baptist Church letter has nothing to do with her applying for a social security number. She further asserts that she indicated that she was self-employed on her I-687 application because as a cleaning person, she was either paid in cash or by check. The applicant does not submit any evidence on appeal.

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. See CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

An alien shall be regarded as having resided continuously in the United States if at the time of filing an application for temporary resident status, no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, through the date the application is filed, unless the alien can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the alien was maintaining residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.2(h)(1).

If the applicant's absence exceeded the 45-day period allowed for a single absence, it must be determined if the untimely return of the applicant to the United States was due to an "emergent reason." Although this term is not defined in the regulations, *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), holds that emergent means "coming unexpectedly into being."

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 of proceeding shows that the applicant submitted a Form I-687 Application and Supplement to Citizenship and Immigration Services (CIS), on December 23, 2005. The applicant indicated at part # 33 of the Form I-687 application that she was self-employed as a caregiver from 1981 to 1997 and earned \$150.00 weekly.

The applicant submitted a copy of an IRS Form 1099 dated 1988 from Janitorial Services. This document is inconsistent with what the applicant stated on her I-687 application at part #33 where she indicated that she was self-employed from 1981 to 1997 as a caregiver. The occupation of caregiver is inconsistent with the services provided by a Janitorial Services Company. The AAO notes further that on appeal the applicant states she was self-employed as a cleaner, and does not mention caregiving. 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. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The applicant also submitted the following documents as evidence:

- A copy of a page from a payment booklet with stamp dates in February and March of 1982;
- A copy of a handwritten pay receipt dated February 16, 1982;
- A copy of a handwritten rent receipt dated May 30, 1983 from apartments;
- A copy of a handwritten prescription dated June 9, 1985 from Gardena Medical Group; and,
- A copy of a reminder letter from dated August 3, 1987

These documents are too sparsely dated to substantiate the applicant's claimed continuous unlawful residence in the United States since before January 1, 1982 and throughout the requisite period, and none of them include the applicant's address during the requisite period.

The applicant submitted the following attestations:

- A letter dated June 18, 1999 from [REDACTED] Child Care Center in which the director stated that the center had employed the applicant from September of 1981 to 1992, and that she earned an average of \$300.00 to \$400.00 per week. Here, the statement made by the declarant is inconsistent with the statements made by the applicant on her Form I-687 application at part #33 where she indicated that she was self-employed from 1981 to 1997. It is also inconsistent with the statement made by the applicant under oath dated April 12, 2006, where she stated that she entered the United States on November 23, 1981. These inconsistencies call into question the declarants' ability to confirm that the applicant resided in the United States during the requisite period. Because the declarant's testimony conflicts with what the applicant indicated on her Form I-687 application, doubt is cast on assertions made in the declaration. *See Matter of Ho*, 19 I&N Dec. 582. In addition, this declaration does not conform to regulatory standards for attestations by employers. Specifically, the letter does not specify the address(es) where the applicant resided throughout the claimed employment period, or the exact dates of employment. 8 C.F.R. § 245a.2(d)(3)(i). Here, the declarant fails to indicate whether the employment information was taken from company records. Neither has the availability of the records for inspection been clarified. 8 C.F.R. § 245a.2(d)(3)(i). The record does not contain copies of personnel records or time cards that pertain to the requisite period to corroborate the assertions made by the declarant. Because this declaration is inconsistent with statements made by the applicant that she was self-employed during this time period, and because it does not conform to regulatory standards, it can be accorded little weight in establishing that the applicant resided in the United States during the requisite period.
- A letter dated April 9, 1998 from [REDACTED] of the Miami Seventh Day Baptist Church in which he stated that he has known the applicant for approximately twenty years, and that their association developed through the applicant's membership in an affiliate Church in Jamaica, West Indies. He further stated that the applicant has always been very actively involved in the life of her Church, and that she continues to play a similar role in the Church that she currently attends. The declarant continues by listing the applicant's church activities in 1981 and from May of 1988 to June of 1993. Here, the declarant's statement is inconsistent with the applicant's statement on her Form I-687 application, at part #31 where she was asked to list all affiliations or associations with clubs, organizations, churches, unions, or businesses, and the applicant did not list any. This inconsistency calls into question the declarant's ability to confirm that the applicant resided in the United States during the requisite period, as claimed. In addition, the declaration does not conform to regulatory standards for attestations by churches at 8 C.F.R. § 245a.2(d)(3)(v). Specifically, the declaration does not specify the applicant's membership dates or the address where the applicant resided during the alleged membership period, nor does it establish the origin of the information being attested to. Because this letter does not conform to regulatory standards, and because it conflicts with the applicant's statements in the record, it can be accorded little weight in establishing that the applicant resided in the United States during the requisite period.

In denying the application the director noted that the attestations submitted were not credible and that the applicant's employment letter was not amenable to verification. The director also noted the inconsistencies in the applicant's statements pertaining to her employment history.

On appeal, the applicant reasserts her claim of eligibility for temporary resident status. She does not submit any new evidence.

In the instant case, the applicant has failed to provide sufficient, credible and probative evidence to establish her continuous unlawful residence in the United States throughout the requisite period. She has failed to overcome the issues raised by the director. The evidence she submitted is inconsistent with statements she made under oath and on her I-687 application. The attestations submitted are either not credible or are lacking in detail and therefore, can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

The absence of sufficiently detailed 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 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.