



U.S. Citizenship
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FILE: [REDACTED]
MSC 05-018-10992

Office: LOS ANGELES

Date: **NOV 26 2008**

IN RE: Applicant: [REDACTED]

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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

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, or *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, Los Angeles. That 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 denied the application, finding that because evidence in the record was not verifiable, 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.

On appeal, the applicant attempts to account for discrepancies noted by the director. She provides updated contact information for a former employer and asserts that the evidence that she submitted in support of her application is sufficient to satisfy her burden of proof.

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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant’s own testimony. 8 C.F.R. § 245a.2(d)(6).

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 (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 established that she (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. The documentation that the applicant submits in support of her claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of affidavits and declarations from the applicant and her friends and family; affidavits of employment; receipts dated during the requisite period; and documents from a bank. Some evidence submitted indicates that the applicant resided in the United States after May 4, 1988; however, because evidence of residence after May 4, 1988 is not probative of residence during the requisite time period, it shall not be discussed. The AAO has reviewed each document in its entirety to determine the applicant’s eligibility; however, the AAO will not quote each witness statement in this decision.

Affiants [REDACTED] and [REDACTED] each state that they have known the applicant since 1981 and that she resided in the United States since 1981 and for the duration of the requisite period. However, none of these affiants states the frequency with which they saw the applicant during the requisite period or to state whether there were periods of time during the requisite period when they did not see the applicant. Similarly, none of the affiants provide concrete information, specific to the applicant and generated by the asserted associations with her, which would reflect and corroborate the extent of those associations and demonstrate that they were a sufficient basis for reliable knowledge about the applicant’s residence during the time addressed in the affidavits. To be considered probative and credible, witness affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Upon review, the AAO finds that, individually and together, the witness statements do not indicate that their assertions are probably true. Therefore, they have little probative value.

The applicant also submits an employment letter from [REDACTED] attesting to the applicant’s employment in California from March 1982 throughout the requisite period.

¹ This letter is dated May 18, 1993.

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states, in pertinent part: that letters from employers should be on the employer letterhead stationary, if the employer has such stationary and must include the following: an applicant's address at the time of employment; the exact period of employment; periods of layoff; duties with the company; whether or not the information was taken from the official company records; and where records are located and whether the Service may have access to the records. The regulation further provides that if such records are unavailable, an affidavit form-letter stating that the alien's employment records are unavailable and noting why such records are unavailable may be accepted in lieu of statements regarding whether the information was taken from the official company records and an explanation of where the records are located and whether USCIS may have access to those records. This affidavit form-letter shall be signed, attested to by the employer under penalty of perjury, and shall state the employer's willingness to come forward and give testimony if requested.

This employment letter states that the applicant was employed as a janitor and provides the applicant's address of record during the requisite period. However, this letter does not state whether there were periods of unemployment during the applicant's employment with this company. It further fails to state whether the dates associated with the applicant's employment were taken from official company records or, if not, how the company determined the applicant's start date with [REDACTED]. Because this letter is lacking with regard to the regulatory requirements noted above, it can be accorded minimal weight as evidence that the applicant resided in the United States from March 1982 until the end of the requisite period. Because the letter does not attest to the applicant's employment prior to January 1, 1982, it carries no weight as evidence of the applicant's residence in the United States before that date.

The applicant also submitted contemporaneous evidence in support of her application, including copies of bills and receipts and a bank document.

The applicant submitted a photocopy of a registered mail receipt, dated July 20, 1984. This receipt indicates that the applicant sent mail to an individual in Mexico. However, there is not address indicated for the individual in Mexico that the mail was sent to. It is not clear why there is no address associated with the recipient the registered mail or how the post office would accept registered mail if there were no address associated with the recipient. Further, as this receipt does not pertain to a date prior to January 1, 1982, it does not offer proof of her residence in the United States prior to that date.

The applicant also submitted a photocopy of a money order receipt that states that the applicant sent a money order to Mexico in March of 1986. Though this money order receipt indicates that the applicant was present in the United States at the time she sent the money order, this receipt does not offer proof of the applicant's residence in the United States prior to January 1, 1982.

The applicant submitted both a photocopy of a hospital bill that indicates it was issued to the applicant on November 29, 1981 and a physical therapy prescription issued to the applicant in October of 1985.

The applicant submitted a photocopy of a payment book from "Phoenix" that indicates it was issued to the applicant on August 3, 1982 and contains entries beginning in July 1982. Because this passbook indicates that it was issued to the applicant in August 1982 but it contains entries beginning in July of that year, doubt is cast on the authenticity of this document. 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 petitioner submits competent objective evidence pointing to where the truth lies. Doubt

cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Though the applicant submitted affidavits attesting to her presence in the United States during the requisite period, these affidavits are significantly lacking in detail, such that they can be accorded minimal weight as evidence that she resided in the United States for the duration of the requisite period. Though the applicant has submitted contemporaneous evidence of her presence in the United States in November 1981 and then on various dates during the requisite period, this evidence includes a bank passbook that states that the applicant had transactions at that bank prior to the date the passbook was issued to her. This casts doubt on the authenticity of this document as evidence of the applicant's residence in the United States during the requisite period and also casts doubt on the credibility of the evidence submitted by the applicant generally.

This inconsistency is material to the applicant's claim it has a direct bearing on the applicant's residence in the United States during the requisite period. As stated previously, doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *See Matter of Ho, supra*.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and 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.