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U.S. Citizenship
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FILE: [REDACTED]
MSC 06 097 12784

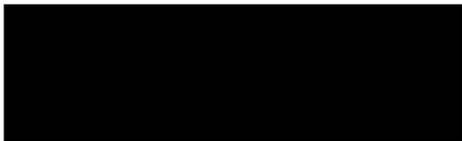
Office: LOS ANGELES

Date: OCT 01 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:



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, Los Angeles. That decision is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director denied the application because the applicant did not establish that she continuously resided in the United States for the duration of the requisite period.

On appeal, counsel states that the applicant was denied due process and equal protection because the officer who conducted the applicant's eligibility interview misrepresented contents of the application and conducted the hearing in an adversarial manner. Counsel states that "the appellant is eligible and qualifies for relief pursuant to SEC. 245A of the INA." Counsel also indicates that he will file a brief within 30 calendar days supporting the appeal. On April 23, 2008, the Administrative Appeals Office (AAO) notified counsel that the record did not contain the brief that counsel had stated would be filed, and asked that a copy of same be forwarded to the AAO. On April 28, 2008, counsel sent a copy of his brief which restated the substance of counsel's statements on the Form I-694 Notice of Appeal. Counsel's brief does not address the basis of the director's decision, but states an objection to the manner in which the applicant's legalization interview was conducted and requests a new hearing.

The director's decision denied the applicant's Form I-687 because the applicant did not establish that she entered the United States before January 1, 1982, and that she resided in a continuous unlawful status, except for brief absences, from before January of 1982 until the date the applicant was turned away by Service officials when she tried to apply for legalization, and, because the applicant did not establish that she was continuously present in the United States, except for brief, casual and innocent departures, from November 6, 1986 until the date she was turned away by the Service when she tried to apply for legalization. The applicant does not address the basis of the director's denial nor offer any new evidence in that regard.

On appeal, counsel claims that the applicant is "entitled to a new hearing to assure that her application is considered on its merits." Counsel bases this claim upon his assertion that the applicant "was denied due process and equal protection of law because the interviewing officer misrepresented contents of the application and conducted the interview in an adversarial manner." Counsel also states, "Many of the appellant's responses were met by an antagonistic approach."

Although the counsel asserts that the applicant's rights to procedural due process were violated, neither he nor the applicant has established any violation. Further, they have not shown that any violation of the regulations resulted in "substantial prejudice" to the applicant. See *De Zavala v. Ashcroft*, 385 F.3d 879, 883 (5th Cir. 2004) (holding that an alien "must make an initial showing of substantial prejudice" to prevail on a due process challenge). The applicant falls far short of

meeting this standard. A review of the record and the adverse decision indicates that the director properly applied the relevant statute and regulations to the applicant's case. Counsel presents no evidence that the interviewer prevented the applicant from presenting any information or documentation in her behalf or that the interviewer deleted or misrepresented any statement or submission by the applicant. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Also, the record of proceedings does not establish the equal protection violation claimed on appeal, as that violation is asserted on the basis of the asserted due process violation that has not been established. Further, as there is no documentary evidence to support the claim of an equal protection violation, the assertions on appeal do not satisfy the burden of proof, as indicated in the precedent cases cited immediately above.

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 245(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)(1) 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that she resided in the United States for the duration of the requisite period. Here, the applicant submitted the following documentary evidence:

WITNESS STATEMENTS

- [REDACTED] submitted a statement that is neither sworn to nor notarized wherein he states that he has known the applicant from “1981 to the present.” The date of the witness statement is June 15, 1993. The witness provides no additional relevant information.
- [REDACTED] submitted a statement that is neither sworn to nor notarized wherein she states that she has known the applicant since 1982, and that she employed the applicant “occasionally” as a babysitter between 1982 and 1988. The witness provides no additional relevant information.
- [REDACTED] submitted a notarized statement wherein she states that she has been acquainted with the applicant since 1981. [REDACTED] further states that the applicant has assisted her with housekeeping and childcare “off and on for the past six years.” The witness statement is dated January 6, 2001.

- [REDACTED] submitted a sworn statement wherein he states that [REDACTED] and [REDACTED] lived with him from September of 1981 until June of 1991 sharing expenses such as rent, gas, phone and electricity. The affiant lists the following residence addresses: from [REDACTED] and from 2-89 until [REDACTED]

The addresses provided by [REDACTED] are inconsistent with the residences listed for the applicant on the Form I-687 for the referenced time periods.

- [REDACTED] issued a sworn statement wherein he states that the applicant left the United States and accompanied [REDACTED] on June 25, 1987, returning on July 15, 1987. The affiant states that he provided transportation for the applicant and [REDACTED] to and from Tijuana on those occasions.

The applicant does not list any such departure from the United States on the Form I-687, which was signed by her under penalty of perjury.

- The applicant submitted a statement to a United States immigration officer on August 31, 1993. That statement is written by the applicant in Spanish. The record contains no translation of the statement. The statement will, therefore, not be considered.
- The applicant submitted a statement that is neither sworn to nor notarized wherein she states that she first entered the United States, without inspection, in September of 1981. She further states that she departed the United States on June 25, 1987, and traveled to Mexico by bus to visit her mother on mother's day. The applicant states that she reentered the United States by bus on July 15, 1987. The applicant further states that she attempted to file for legalization but was informed that she was not eligible because she had left the country without advance parole.

The statement of the applicant is inconsistent with her Form I-687 in that no such departure is listed on the Form I-687 which was signed by the applicant under penalty of perjury. Further, the statement is inconsistent with the affidavit submitted by [REDACTED] on the applicant's behalf wherein he stated that he provided transportation for the applicant and [REDACTED] to and from Mexico on the dates of travel listed by the applicant in her statement. The applicant states that she traveled to and from Mexico by bus, and makes no mention of being provided transportation by [REDACTED]

Although the applicant has submitted her unsworn statements and other witness statements/affidavits in support of her application, the applicant has not established her continuous unlawful residence in the United States for the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality; an applicant must provide evidence of eligibility apart from his or her own testimony;

and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility.

The witness statements submitted state generally how the witnesses know the applicant, and that the applicant has resided in the United States for the requisite period, or some portion thereof. The witness statements provide no additional relevant information. None of the witness statements provide concrete information, specific to the applicant and generated by the asserted associations with her, that 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 statements. To be considered probative and credible, witness statements must do more than simply state that a witness 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 statements do not indicate that **their assertions are probably true. Therefore, they have little probative value. Further, the statements contain conflicting information which has been detailed above. The noted inconsistencies have not been explained and are material to the applicant's claim because they bear directly upon her claimed residence in the United States during the requisite period. 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).**

ATTESTATION

The applicant submitted an attestation from [REDACTED] Associate Pastor of La Purisima Catholic Church, Orange, CA of Brooklyn, Inc, on the church's letterhead. [REDACTED] states that the applicant resides at [REDACTED] is a member in good standing of La Purisima Catholic Church, Orange, CA, and according to church records has been a member in good standing since 1981. The statement provided is a "fill in the blank form" with relevant information simply typed into the blanks provided.

The regulation at 8 C.F.R. § 245a.2(d)(3)(v), as hereinafter set forth, provides requirements for attestations made on behalf of an applicant by churches, unions, or other organizations:

- (v) Attestations by churches, unions, or other organizations to the applicant's residence by letter which:
 - (A) Identifies applicant by name;

- (B) Is signed by an official (whose title is shown);
- (C) Shows inclusive dates of membership;
- (D) States the address where applicant resided during membership period;
- (E) Includes the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery;
- (F) Establishes how the author knows the applicant; and
- (G) Establishes the origin of the information being attested to.

The attestation is not deemed probative or credible because it does not establish how the author knows the applicant. It states simply that "according to our records" the applicant has been attending church on a regular basis since 1981. The statement does not include copies of any such records, nor does it identify the records from which the author's information was taken.

Therefore, based upon the foregoing, the applicant 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.