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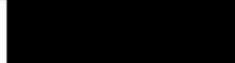
U.S. Citizenship
and Immigration
Services

PUBLIC COPY



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FILE:



Office: LOS ANGELES

Date:

OCT 22 2008

SRC-03-093-52372

IN RE:

Applicant:



APPLICATION:

Application for Temporary Resident Status under 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 your case 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.

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The termination of the applicant's temporary resident status by the Director, East Los Angeles Legalization Office, is 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), 8 U.S.C. § 1255a(a), 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). The application, dated January 20, 2003, was approved on August 19, 2005. On April 30, 2007, the applicant submitted a Form I-698, Application to Adjust Status from Temporary to Permanent Resident.¹ She was interviewed in connection with her I-698 application on December 13, 2007 by an officer of the U.S. Citizenship and Immigration Services (CIS). On December 18, 2007, CIS issued a Notice of Intent to Terminate her temporary resident status because she was ineligible for such status under section 245A of the Act.

The Notice of Intent to Terminate stated that the applicant was ineligible because of the following contradictions and inconsistencies in her testimony:

1. The applicant applied for temporary resident status "as an alien who entered the U.S. as a nonimmigrant prior to January 1, 1982 and whose authorized stay expired before such date." She reported that she had entered the United States in October 1981 with a visitor's visa and had left the United States only once, from February 16, 1987 to March 12, 1987; and that the passport with that visa had been lost in 1988. However, during her interview on December 13, 2007, she confirmed that she entered the United States for the first time in October 1981 with a B-2 Visa but stated that she was authorized to stay until the middle of January 1982. The applicant also failed to note, both in 1990 and in 2007, that she had entered the United States with a B-2 Visa on January 21, 1990, as documented by immigration records.
2. As evidence of residence the applicant submitted a receipt from Kingdom Sewing Machine, Inc., dated March 7, 1987 and made out to the applicant. This contradicted her testimony that she was not in the United States on that date.

Based on those contradictions, the director found that the applicant was not in the United States in an unlawful status prior to January 1, 1982, as the applicant had testified that she had authorization

¹ Gloria Saucedo signed as the preparer of this form; she had also filed a Form G-28, Notice of Entry of Appearance as Attorney or Representative, in January 2001 as the applicant's representative based on her affiliation with Hermandad Mexicana Nacional. The AAO notes that neither [REDACTED] nor Hermandad Mexicana Nacional appears on the current list of individuals or agencies accredited to provide such representation. The applicant is therefore considered to be self-represented.

to remain in the United States until the middle of January 1982; and the documented 1990 entry “appears to contradict [her] claim of unlawful residence [from] 1981 – 1989.”

In rebuttal, the applicant described her CIS interview on December 13, 2007. She stated that the questioning “was rigorous” and “disoriented” her and that she “was coerced to write that [she] had lived in the United States since October 1981 and that [she] had entered with a B2 visitor visa, which expired in the middle of January.” She added that “this statement misrepresents and contradicts the fact that the visa expired in December and not in January as evidenced in my application that is contained in my file.”

The director issued a Notice of Termination on March 18, 2008, finding that the applicant had failed to overcome the grounds for termination in the Notice of Intent to Terminate and failed to establish by a preponderance of the evidence that she entered the United States prior to January 1, 1982 and lived in unlawful status thereafter for the requisite period. The Notice of Termination indicated that that applicant’s April 4, 1990 Form I-687 and Determination of Class Membership reported that the applicant’s authorized stay in the United States expired in December 1981; that the applicant indicated that she had entered the United States in 1981 using passport # [REDACTED]; and that she had left the United States only once, in 1987. The director also noted that the applicant later reported that her passport was lost in 1988, but that CIS had a record of the applicant’s entry on that passport on January 21, 1990, contradicting the applicant’s statements regarding the lost passport and the sole exit and entry to the United States in 1987. The Notice of Termination also indicated that the applicant had failed to explain the contradiction in the date of the receipt in 1987 on a day the applicant claimed to be outside the United States; that the applicant had presented no evidence that she entered the United States with a visa and, if she had a visa, no evidence that her authorized stay expired prior to January 1, 1982.

The AAO agrees that the applicant has failed to overcome the director’s grounds for termination and that the applicant has failed to provide evidence of eligibility for temporary residence pursuant to section 245A of the Act. Specifically, the applicant has not established by a preponderance of the evidence that she has continuously resided in the United States in an unlawful status for the duration of the requisite period.

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).

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), “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 initial legalization filing 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. *See* 8 C.F.R. § 245a.2(d)(6). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to affidavits indicating specific personal knowledge of the applicant's whereabouts during the time period in question rather than fill-in-the-blank affidavits that provide generic information.

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.

In this case, the I-687 Application for Temporary Resident Status was approved based on the record. The law provides, however, for the termination of such status if it appears that the applicant was in fact not eligible for such status. Section 245A(b)(2)(A); 8 U.S.C.

§ 1255a(b)(2)(A). Upon a *de novo* review of the relevant evidence in the record, the AAO agrees with the director's conclusion that the applicant was not eligible for temporary resident status.²

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate by a preponderance of the evidence that she entered before 1982 and resided in the United States for the requisite period, which, as noted above, is from prior to January 1, 1982 through the date when she was discouraged from filing her I-687 Application, between May 5, 1987 and May 4, 1988. In this case, the applicant has failed to meet this burden.

Evidence on Appeal

On appeal, the applicant submits Form I-694, Notice of Appeal of Decision, dated April 14, 2008. In an attached statement, she addresses the inconsistencies set forth in the director's Notice of Termination, noted above. She claims that she has been living in the United States since October 1981; that she lost the passport she used at that time and for her travel in 1987 and has submitted a police report with that information; and that she traveled to Sri Lanka in November 1989 and returned to the United States in January 1990, not in 1981 or 1987, using passport # [REDACTED]. She claims that she provided that number on her 1990 Form I-687 because it was the only passport she had and the only number she could provide. on; and that this information was later copied onto her application of February 12, 2003. She also explained that the receipt dated March 7, 1987, was for a sewing machine that her brother picked up for her on that date while she was out of the country. She explained that she did not mention her departure in November 1989 because "the form stated to report all travel until 1988. I was afraid that I would disqualify for the program, if I left the country for the second time."

The record reflects that the applicant consistently claimed that she entered the United States in October 1981, that her visa expired in December 1981 and that she resided unlawfully in the United States thereafter throughout the requisite period. This information is provided on her Form I-687 and Determination of Class Membership, dated April 4, 1990; in her Sworn Declaration in support of her legalization questionnaire and request for LULAC class membership, dated January 29, 2001; on her Form I-687 Application for Status as a Temporary Resident, dated January 20, 2003; and in her rebuttal to the director's Notice of Intent to Terminate, dated January 10, 2008. The only time this testimony was inconsistent was at the applicant's CIS interview on December 13, 2007, when she signed a statement that her visa expired in January 1982.

Although the applicant claims that the interview process was "rigorous" and she was "disoriented" and "coerced" into writing a statement, describing in detail a process that raises questions about the adversarial nature of the interview, the AAO notes that the objective

² The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also*, *Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

evidence in the record is the applicant's statement signed under oath at the time of the interview, which conflicts with her prior statements. Moreover, other than her own statements, the applicant has not provided any evidence on appeal or previously in support of her 1990 Form I-687 or her I-687 Application regarding her entry with a visa in 1981. To meet her burden of proof, the applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.13(f).

The inconsistency in her testimony and failure to provide any objective evidence in support of her claim or address the inconsistency with other than her own statements raise questions about the credibility of the applicant's account of her entry on a B-2 Non-Immigrant Visa in 1981.

The applicant has also failed to provide any evidence or reasonably explain other inconsistencies set forth in the Notice of Denial. The director noted inconsistencies in the applicant's failure to report her entry in 1990, her use of a passport at that time that she claimed had been lost in 1988, and the submission of a receipt as evidence of residence that contradicted her testimony.

Although the applicant claims that she did not report a 1989 departure and 1990 entry on her 1990 Form I-687 and her I-687 Application "because the form stated to report all travel until 1988," this statement is contrary to the fact that the Form I-687 clearly asks for "[a]bsences from the United States since entry," and the applicant did report other entries in 1994 and 1996 on her I-687 Application while omitting the 1990 entry. Moreover, the applicant also failed to disclose her 1990 entry in response to CIS's Request for Additional Evidence on May 31, 2003. She responded to that request by providing a list of "all visits to a foreign country and the period and purpose of those visits from January 1, 1982 to the present," again failing to include the 1990 entry. Although the applicant's claimed absence from 1989 to 1990 falls outside the requisite dates of residence, her failure to disclose the 1990 entry raises doubts as to the credibility of the applicant's accounts of her entries into and absences from the United States.

The applicant asserts that in 1988 she lost the passport she used for her entry to the United States in October 1981, and that the passport number (No. [REDACTED]) which she provided on her I-687 Application and prior 1990 Form I-687 was for the passport she used to travel to Sri Lanka in 1989 and return to the United States in 1990. However, she has submitted contradictory evidence. The record includes her sworn statement, dated May 1, 1990 in Los Angeles, declaring under penalty of perjury, "that I have lost my passport (No. [REDACTED]) issued to me at Colombo, Sri Lanka. The passport was stolen . . . during the last week of July in 1988." Again, the applicant's contradictory statements regarding her travels to the United States raise doubts as to the credibility of her accounts of her entries into and absences from the United States.

The submission of a receipt as evidence of residence written out to the applicant on March 7, 1987, a day when the applicant claimed to be outside the United States, raises further doubts as to the credibility of her accounts of her dates of residence or presence in the United States. Her explanation that it was her brother who actually purchased the item that she had previously ordered does not explain why she would submit the receipt as evidence of her presence in the United States on that date.

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). In this case, the applicant has not resolved any of the inconsistencies raised by the director by independent objective evidence and has not provided any evidence other than her own statements on appeal.

Prior Evidence of Entry and Residence

The AAO notes that the applicant has submitted five statements as evidence that she was in the United States prior to her documented entry in 1990:

- Two affidavits, dated January 26 and 31, 2001, respectively, are from individuals who attest to the applicant's travel to Sri Lanka from February to March 1987 and her attempt to apply for legalization after she returned. The statements contain practically identical language stating that her mother in Sri Lanka was ill and that she tried to file her amnesty application. Neither individual provides any contact information. They have little probative value as evidence of the applicant's residence in the United States during the requisite period.
- A third statement, on letterhead of "[REDACTED] Travel Service," confirms that the applicant traveled to Sri Lanka to see her sick mother on February 16, 1987 and returned on March 12, 1987. It is dated January 7, 2003 and signed over the words "Upul Travel Service" with an illegible signature. It is not notarized, and there is no form of identification attached, so the declarant, who claims that he or she sold the applicant her airline ticket, is unknown. The statement has no probative value. A copy of an airline ticket issued on January 9, 1987 is also in the record, but with a notation that no original was seen. This document cannot therefore be given any weight as evidence.

The other two statements are from individuals who claim to have known the applicant since 1981. A statement from [REDACTED] is dated August 21, 2003 and is not notarized or accompanied by any identification. Mr. [REDACTED] provides his address in Winnetka, California, and states that he met the applicant, who was a close friend of one of his brother's clients, in Philadelphia in December 1981 on Christmas. He then reports that the applicant had moved to [REDACTED] in Bloomfield, New Jersey in October 1981 where she lived until January 1986, and then moved to [REDACTED], Hackettstown, New Jersey, adding that during his visits with his family in Philadelphia he used to speak to the applicant on the phone and also visited her as a friend; he also notes that she moved to California in November 1986 and provides her addresses there. He states that she is a banker, currently works for Citibank and has helped him in various banking issues. Aside from repeating the applicant's various addresses, generally consistent with the information provided by the applicant on her I-687 Application, and noting her occupation, there are few details that indicate a relationship of over 20 years or personal

knowledge of the applicant's whereabouts or circumstances in the United States during the requisite period. As [REDACTED] claims to have met the applicant in December 1981, the information regarding her move to Bloomfield in October is not based on personal knowledge, and he does not claim to know how or when the applicant first entered the United States. The fact that the statement is neither notarized nor accompanied by some form of identification raises doubts as to the identity of the declarant. For the reasons noted, his statement has minimal weight as evidence of the applicant's residence in the United States during the requisite period.

- The fifth statement is from [REDACTED], dated December 21, 2002 and notarized on January 15, 2003. He provides his address in Anaheim, California, and claims that he has known the applicant since November 1981, that they first met in New Jersey through the applicant's brother and he met her again in November 1986 when she moved to California. He adds that she went to Sri Lanka in February 1987 and returned in March 1987, he visited her frequently in Canoga Park and she moved in with him, his brother and the applicant's brother in 1987 at [REDACTED], Tarzana, California. As with the statement from [REDACTED], aside from repeating the applicant's addresses from 1986 to 1988 consistent with the information provided by the applicant on her I-687 Application, [REDACTED] provides few details that indicate a relationship of over 20 years or personal knowledge of the applicant's whereabouts or circumstances in the United States during the requisite period. He does not claim to know how or when the applicant first entered the United States and does not claim to know where she resided before 1986. The statement has minimal weight as evidence of the applicant's residence in the United States during the requisite period.

The remaining evidence in the record is comprised of the applicant's statements and application forms, in which she claims to have entered the United States in October 1981 and resided thereafter in New Jersey and California. As noted above, to meet her burden of proof, the applicant must provide evidence of eligibility apart from her own testimony. 8 C.F.R. § 245a.13(f).

In this case, the applicant's assertions regarding her entry in 1981 are not supported by any credible evidence in the record. In fact, the five supporting declarations she has submitted do not refer to the date or circumstances of her entry. Her own statements contain significant inconsistencies and are in some instances contradicted by objective evidence in the record. The applicant has also failed to provide independent objective evidence to resolve any of the inconsistencies raised by the director, as required by *Matter of Ho*, 19 I&N Dec. at 591-92.

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 documentation in support of her application, and the inconsistencies and contradictions noted above, 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*, 20 I&N Dec. at 79-80. The

applicant was, therefore, ineligible for temporary resident status under section 245A of the Act on this basis, and such status has been terminated pursuant to section 245A(b)(2)(A) and 8 C.F.R. § 245a.2(u)(1)(i).

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