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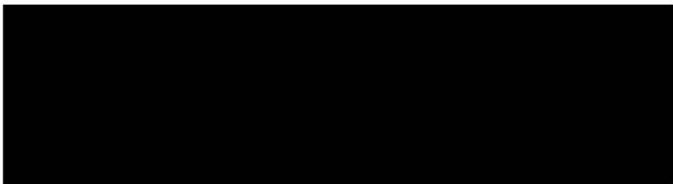
Office: NEW YORK

Date: OCT 29 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.

A handwritten signature in 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 District Director, New York. 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 on April 15, 2005. Upon review, the director determined that insufficient evidence has been presented to establish eligibility under section 245A of the Act. On March 16, 2007, the director issued a notice of intent to deny stating that the applicant's story of her presence in the United States lacked credibility and that she had submitted a fraudulent affidavit making her inadmissible to the United States under section 212(a)(6)(C)(i). In response, the applicant submitted a supportive statement from the affiant and an identification card bearing his name and photograph. The director denied the application, finding 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 also denied the application, finding that the applicant had submitted a fraudulent affidavit and therefore, was inadmissible to the United States.

On appeal, the applicant asserts that she has established eligibility for the benefit sought.

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.

At issue in this proceeding is whether the applicant submitted sufficient credible evidence to meet her burden of establishing that she (1) entered the United States before January 1, 1982 (2) has continuously resided in the United States in an unlawful status for the requisite period of time and (3) did not submit a fraudulent document in an attempt to gain a benefit. Here, the applicant has failed to meet this burden.

The record shows that the applicant’s Form I-687 application at part #30 where the applicant was asked to list her places of residence she indicated that she resided in New York from December 1981 to January 1986. She also indicated at part 33 of her Form I-687 application that she was self-employed in New York as a hair dresser from June 1996 to present. The Form I-687 application at part 32 lists no absences from the United States for the applicant since her initial entry. On June 27, 2006, the applicant was interviewed in connection with her Form I-687 application. The director determined that the applicant’s testimony was inconsistent and did not demonstrate eligibility for the benefit sought under section 245A of the Act.

In an attempt to establish continuous unlawful residence in the United States since prior to January 1, 1982, the applicant submitted an affidavit from [REDACTED]. In the notice of intent to deny (NOID), the director states that the affiant, [REDACTED], was contacted by telephone by the interviewing officer and stated that he had never heard of the applicant and had no knowledge of an affidavit. In response to the NOID, the applicant submitted an affidavit and supportive statement that were both dated April 3, 2007 and signed by [REDACTED]. In the supportive statement, the affiant reconfirms his affidavit dated October 19, 2006, regarding his knowledge of the applicant. In the statement, the affiant contends that the applicant never

submitted a fraudulent affidavit and enclosed his New York State Benefit identification card as proof of his identity. This evidence was not taken into consideration prior to the director's denial of the application on May 11, 2007. The affiant's signature is identical and reads the same on the affidavits, supportive statement and the copies of the identification cards. However, the affidavits and subsequent supportive statement signed by [REDACTED] are inconsistent and conflict with the previous telephone conversation he had with the interviewing officer where he stated that he had never heard of the applicant. His current retraction of such statement is not deemed credible and does not support the applicant's claim that she entered the United States in December 1981 and continued to unlawfully residence in the United States for the duration of the requisite period.

In the initial and subsequent affidavits, [REDACTED] states that he knew the applicant as a hair dresser for his wife and sister from 1981 to 1988. He also states in his subsequent affidavit that he personally knows the applicant and can vouch for her residency in the United States since January 1981. The applicant's Form I-687 does not have her residing in the United States until December 1981. The contradiction is material to the applicant's claim in that it has a direct bearing on the applicant's residence in the United States during the requisite period. The affidavits provided by the applicant, therefore, are not deemed credible and shall be afforded little weight. 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).

Further, the affidavits and supportive statement fail to explain how the affiant and the applicant developed and maintained a friendship. The affiant fails to specify the frequency with which he saw and communicated with the applicant during the requisite period. The affiant also fails to indicate any other details that would lend credence to his claimed knowledge of the applicant and the applicant's residence in the United States during the requisite period. The affidavit fails to establish the applicant's continuous unlawful residence in the United States for the duration of the requisite period.

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 affiant's affidavits and supportive statement do not indicate that their assertions are probably true. Therefore, they have little probative value.

The applicant submitted copies of pages from her Senegalese passport. The passport was issued to the applicant on September 19, 2001. The nonimmigrant visa contained in the passport reveals that a B-2 (visitor for pleasure) nonimmigrant visa was issued to the applicant on March 14, 2002. A copy of the applicant's I-94 Departure Record shows that the applicant was admitted to the United States on April 2, 2002 until October 1, 2002.

The record contains the applicant's Form I-589, Application for Asylum and for Withholding of Removal that was filed on October 8, 2000. Form I-589 states at part 18 to list each entry into the United States beginning with the most recent entry. The applicant listed only one entry: she entered as a B-2 at New York on April 2, 2002. This is inconsistent with the applicant's assertion on her Form I-687 that she commenced living in the United States in December 1981.

In the instant case, the applicant has failed to submit sufficient evidence to overcome the director's denial. The inconsistencies that exist in the above noted evidence calls into question the credibility of the applicant's claim of continuous unlawful residence in the United States throughout the requisite period. The affiant's affidavits and supportive statement, while providing some evidence of the applicant's presence in the United States, are insufficient to establish the applicant's 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. These inconsistencies are material to the applicant's claim in that they have 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 she 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.