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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:

MSC-06-053-13270

Office: MIAMI

Date: SEP 02 2008

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.

for *Michael T. Kelly*
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, Miami. 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 November 22, 2005 (together, the I-687 Application). 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, specifically noting that the applicant failed to submit evidence in response to the director's October 19, 2006 notice of intent to deny. The director denied the application as the applicant had not met her burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, the applicant submitted a Form I-694 Notice of Appeal of Decision Under Section 210 or 245A and new evidence. On the Form I-694, the applicant states that she has been unable to find her passport with the original entry date stamp and has requested a copy of her file from the USCIS. The applicant requested an extension until she receives a copy of her records. USCIS records indicate that the applicant was provided a copy of the requested record of proceeding in May 2008. As of this date, the AAO has not received a brief or any additional evidence from the applicant. Therefore, the record is complete.

The AAO bases its decision upon a *de novo* review of the entire record of proceeding, which includes its own independent analysis of all the evidence. 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). As reflected in the discussion of the evidence below, the AAO does not discount any of the witness statements for lack of a phone number, identifying documentation, or proof of the declarant's presence in the United States. Rather, the AAO will evaluate the content of each statement for probative value and credibility in accordance with the analytical framework described below.

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)(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 periods, 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, 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).

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 an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that she entered before 1982 and resided in the United States for the requisite period.

The applicant has provided several letters; a copy of the applicant's passport issued on February 18, 1994; a copy of the applicant's Form I-94 card with an entry date of April 13, 1994; a copy the applicant's visa issued on August 12, 1985; copies of entry date stamps for October 9, 1985, May 14, 1986, and July 10, 1986; a copy of the applicant's social security card; a copy of the applicant's driver's license application dated July 10, 1987; and a social security administration report indicating earnings by the applicant from 1985 to 1987. The applicant's passport and social security card are evidence of the applicant's identity, but do not demonstrate that she entered before January 1, 1982 and resided in the United States for the requisite period. The following documents refer to the requisite time period:

- A statement from [REDACTED]. The declarant states that she has known the applicant since 1980 and that the applicant has "continued to reside here since" that time. The AAO notes that the date provided by the declarant is inconsistent with the applicant's sworn statement in which the applicant states that she first entered the United States on November 25, 1981 without inspection. In a subsequent letter dated November 14, 2006, the applicant stated that her date of entry was in fact September 13, 1980. The information implies that the applicant entered on September 13, 1980 with inspection. 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. 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. See *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Although the declarant states that she has known the applicant since 1980, the statement does not supply enough details to lend credibility to an at least 25-year relationship with the applicant. For instance, the declarant does not indicate under what circumstances she met the applicant in 1980, how she dates her initial meeting with the applicant, or how frequently she had contact with the applicant. Also, the letter is not clear as to whether the declarant met the applicant in the United States. Further, the declarant provides no specific information about the applicant's residence and whereabouts. In addition, the letter is not notarized and the declarant did not provide proof of her identity. Given these

deficiencies, this statement has minimal probative value in supporting the applicant's claims that she entered the United States in 1981 and resided in the United States for the entire requisite period.

- A statement on The Changing Room letterhead from [REDACTED], owner. The letter states that the applicant worked for [REDACTED] as a receptionist from “approximately 1984 to September 1985.” The declarant did not sign the letter. In addition, the letter is not notarized and the declarant did not provide proof of her identity. The AAO is unable to determine who actually wrote this letter. Furthermore, the applicant makes no mention of this job in the Form I-687. Therefore, this letter has no probative value in supporting the applicant's claims that she entered the United States prior to January 1, 1982 and resided in the United States for the entire requisite period.
- A statement on [REDACTED] letterhead signed by [REDACTED] President and CEO. [REDACTED] states that he has known the applicant “for many years.” Although the declarant states that he has known the applicant for many years, the statement does not supply enough details to lend credibility to a long-term relationship with the applicant. For instance, the declarant does not provide a year for when he first met the applicant or how frequently he had contact with the applicant. Further, the declarant provides no specific information about the applicant's residence and whereabouts during the requisite time period. Given these deficiencies, this letter has no probative value in supporting the applicant's claims that she entered the United States in 1981 and resided in the United States for the entire requisite period.
- A Social Security Administration (SSA) report dated October 24, 2006. The SSA report indicates that the applicant paid social security taxes from 1985 to 1987 and from 1994 to 1998. The AAO notes that the applicant indicated that she was unemployed on the Form I-687 and did not list any employers on the Form I-687. This report could indicate that the applicant resided in the United States from 1985 to 1987, but does not support the applicant's claim that she entered the United States in 1981 and resided in the United States for the entire requisite period.

None of the above witness documents contain detailed information generated by the asserted contact with the applicant that is sufficient to demonstrate the actual extent of that contact.

The remaining evidence in the record is comprised of the applicant's statements, in which she claims to have entered the United States in November 25, 1981 without inspection and to have resided for the duration of the requisite period in Miami, Florida. In a subsequent letter dated November 14, 2006, the applicant stated that her date of entry was in fact September 13, 1980 implicitly with inspection. The applicant's statements contradict each other in both the date of her arrival and the manner in which she first arrived in the United States. 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. 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. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The applicant has not submitted any additional evidence in support of her claim that she was physically present or had continuous residence in the United States during the entire requisite period or that she entered the United States in 1981.

The director issued a notice of intent to deny (NOID) on October 19, 2006. The director denied the application for temporary residence on November 24, 2006. The director noted that the applicant failed to submit evidence in response to the director's NOID. In denying the application, the director found that the applicant failed to establish that she entered the United States prior to January 1, 1982 or that she met the necessary residency or continuous physical presence requirements. Thus, the director determined that the applicant failed to meet her burden of proof by a preponderance of the evidence.

On appeal, the applicant stated that she requested a copy of her file from USCIS in order to obtain a copy of her old passport. USCIS records indicate that the applicant was provided with a copy of the record of proceeding in May 2008. As of this date, the AAO has not received any additional evidence from the applicant. Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that she is eligible for the benefit sought.

In this case, the absence of sufficient credible and probative documentation to corroborate the applicant's claim of continuous residence for the requisite period seriously detracts from the credibility of her 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 lack of credible supporting documentation, it is concluded that 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.