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U.S. Citizenship
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LI

[REDACTED]

FILE: [REDACTED]
MSC-05-162-12265

Office: LOS ANGELES

Date: SEP 23 2008

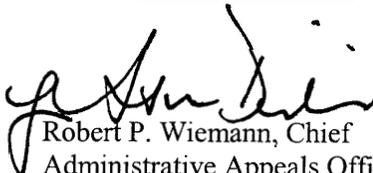
IN RE: Applicant: [REDACTED]

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. 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 District Director, Los Angeles. The decision is now before the Administrative Appeals Office 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 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. The director noted in the decision that the affidavits submitted by the applicant were not verifiable. The director denied the application finding that the applicant had not met her burden of proof and that she was therefore not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, the applicant asserts that she was an undocumented worker, was paid in cash, and therefore did not have records of paying bills and hence, no receipts.

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. See CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

An alien shall be regarded as having resided continuously in the United States if at the time of filing an application for temporary resident status, no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, through the date the application is filed, unless the alien can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the alien was maintaining residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.2(h)(1).

If the applicant's absence exceeded the 45-day period allowed for a single absence, it must be determined if the untimely return of the applicant to the United States was due to an "emergent reason." Although this term is not defined in the regulations, *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), holds that emergent means "coming unexpectedly into being."

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).

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 has submitted sufficient credible evidence to meet her burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record of proceeding shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS), on August 26, 2005. The applicant indicated at part # 30 that she resided at [REDACTED], California

from January of 1981 to January of 1987; and [REDACTED] in Los Angeles, California from January of 1987 to June of 1992.

The applicant submitted as evidence a copy of a handwritten receipt bearing her name and dated August 4, 1984. While this receipt is some evidence of the applicant's presence in the United States, it is insufficient to demonstrate her continuous unlawful residence in the country throughout the requisite period. The applicant also submitted the following attestations:

A declaration dated February 22, 2005 from [REDACTED] in which she stated that she has known the applicant since 1981 and that she was introduced to the applicant when the applicant had no place to stay and she rented her a room. She lists [REDACTED] California at that time. The declarant also stated that she and the applicant became good friends and that she would phone each other and visit regularly. Here, the declarant's statements are inconsistent with the information provided by the applicant in her I-687 application at part #30 where she did not list [REDACTED] as an address where she resided since her entry into the United States. Because the declaration is inconsistent with statements made by the applicant, it can be afforded little weight in establishing the applicant's residency in the United States during the requisite period.

A declaration dated February 22, 2005 from [REDACTED] in which he stated that he has known the applicant to live in the United States since 1981 and that they would phone and visit with each other regularly. Here, the affiant fails to demonstrate detail that would lend credence to his claimed knowledge of the applicant and her residence in the United States during the requisite period. Because the affidavit is lacking in detail, it can be afforded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

- A fill-in-the-blank affidavit dated July 13, 1993 from [REDACTED] in which he stated that he met the applicant in November of 1981 at the home of [REDACTED] a mutual friend, and that they have become friends since that date. The affiant lists the applicant's address as Los Angeles, California from November of 1981 to July of 1993. Here, the affiant fails to specify the frequency with which he saw the applicant, or any other detail that would lend credence to his claimed knowledge of the applicant and her residence in the United States during the requisite period. Because the affidavit is significantly lacking in detail, it can be afforded only minimal weight in establishing that the applicant resided in the United States during the requisite period.
- A fill-in-the-blank affidavit dated March 10, 1994 from [REDACTED] in which he stated that he met the applicant in 1981 when she was a tenant at [REDACTED] in Los Angeles, California from January 22, 1981 to January 1, 1987, while he was the property manager. This affidavit is inconsistent with the declaration of [REDACTED] in which she stated that she rented a room to the applicant at [REDACTED]

in Los Angeles, California. There has been no explanation given for this inconsistency. Because this affidavit is inconsistent with other evidence in the record, it can be afforded little weight in establishing the applicant's residency in the United States during the requisite period.

- A fill-in-the-blank affidavit dated July 13, 1993 from [REDACTED] in which he stated that the applicant is his co-worker's wife. He also stated that he and the applicant's husband were friends and were employed at the same restaurant from September of 1981 to September of 1983, and that during that time he would visit the applicant's home. Here, there is no evidence to show that the affiant has personal knowledge of the applicant's entry into the United States, and he has failed to demonstrate the frequency with which he saw and communicated with the applicant during the requisite period.

In denying the application the director noted that the affidavits submitted by the applicant were not verifiable.

On appeal, asserts her claim of eligibility for temporary resident status. She also asserts that she was an undocumented worker and as such, was paid in cash, paid her bills in cash, and therefore does not have any receipts to submit as evidence. She further asserts that she has submitted credible declarations from persons who were aware of her presence in the United States.

The applicant resubmitted on appeal the declarations from [REDACTED] [REDACTED] The applicant also submitted the following affidavits:

- An affidavit dated July 18, 2005 from [REDACTED] in which she states that she has known the applicant since June of 1985 when they met at Vons store at 3rd and Vermont Streets and that they have developed a friendship since then. She also states that she recommended the applicant and her husband for an apartment, and that she and the applicant attend the same church. Although this statement is some evidence of the applicant's presence in the United States, it is insufficient to establish her continuous residence throughout the requisite period.
- An affidavit from [REDACTED] in which he states that he has known the applicant to have lived in the Los Angeles, California since August of 1981. He also states that he and the applicant's husband are friends from Mexico since 1978 and that they met again in the United States in 1981 and have been friends and visited with one another since then. Here, the affiant fails to demonstrate detail that would lend credence to his claimed knowledge of the applicant and her residence in the United States during the requisite period. Because the affidavit is lacking in detail, it can be afforded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

In the instant case, the applicant has failed to provide sufficient, credible and probative evidence to establish her continuous unlawful residence in the United States throughout the requisite period. She has failed to overcome the issues raised by the director. Although the attestations submitted are some proof of the applicant's presence in the United States, she has failed to submit sufficient evidence to corroborate her claimed continuous unlawful residence in the country throughout the requisite period.

It is noted that the applicant submitted a number of tax documents bearing her name and the name [REDACTED] however, these documents are dated subsequent to the requisite time period and therefore are irrelevant to demonstrate the applicant's claimed presence in the United States.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of this 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 applicant's reliance upon documents with minimal probative value, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States for the requisite period 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.