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**U.S. Citizenship
and Immigration
Services**

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FILE:

MSC-06-053-12030

Office: HOUSTON

Date:

SEP 23 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.

A handwritten signature in black ink, appearing to read "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, Houston. 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. 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 district director noted that the affiants were not amenable to verification and were not credible. The director denied the application, finding that 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 asserts her claim of eligibility for temporary resident status and asserts that the affiants are amenable to verification and submits affidavits in support of her claim.

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.

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 shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on November 22, 2005.

The affiants

state that they have known the applicant between the years 1989 and 2001. Because the affiants have not attested to knowing the applicant during the requisite period, their statements are irrelevant to the issue of her eligibility for temporary resident status.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted the following affidavits as evidence:

- **An affidavit from** in which he stated that he has known the applicant since 1981 and at the time that they met, the applicant was living in the same neighborhood as his parents. The affiant stated that he and the applicant became friends. The affiant also stated that the applicant worked and lived at his parents’ friends home for nearly ten years. Here,

the affiant fails to specify the neighborhood where his parents lived or the time period in which the applicant lived in the area. The affiant fails to specify an address where the applicant lived at the time he met her. The affiant also fails to specify the frequency with which he saw and communicated with the applicant during the requisite period. Because the affidavit is lacking in detail, it can be afforded only minimal weight in establishing the applicant's residence in the United States during the requisite period.

- An affidavit from [REDACTED] in which he stated that he has known the applicant since 1981 when he met her at a church meeting, and that thereafter they developed a friendship. He also stated that his family invited the applicant to lunch at their house where the applicant indicated her future plans and expressed her interest in obtaining employment in the United States. Here, the affiant fails to specify the frequency with which he saw and communicated with the applicant during the requisite period. The affiant fails to demonstrate his first hand knowledge of the applicant's places of residence or the whereabouts and circumstances of her presence in the United States during the requisite period. Because this affidavit is lacking in detail, it can be afforded only minimal weight in establishing the applicant's residence in the United States during the requisite period.
- An affidavit dated October of 2005 from [REDACTED] in which she stated that her address is [REDACTED] Texas and that she has known the applicant since 1981. The affiant also stated that the applicant worked for her and lived in her home for eight years. Here, the affiant's statement is inconsistent with what the applicant stated on her I-687 application at part #30 where she indicated that she resided at [REDACTED] Texas from 1981 to 1986. This inconsistency calls into question the credibility of the affiant's statements. 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. 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 lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Given this discrepancy, the affidavit can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.
- An affidavit from [REDACTED] in which she stated that she resides at [REDACTED] in Houston, Texas, and that she has known the applicant since December of 1985 when she met her at the home of [REDACTED]. She also stated that she offered the applicant a job at the behest of [REDACTED] and that the applicant worked for her from 1988 to 1990. This statement is inconsistent with the statement made by [REDACTED] noted above. This statement is also inconsistent with the statement made by the applicant on her I-687 application at part #30 where she indicated that she resided at [REDACTED] Texas from 1986 to 1990. This inconsistency calls into question the credibility of the affiant's statements.

In denying the Form I-687 application, the director noted that the applicant had submitted affidavits that were not amenable to verification. The director also determined that the applicant submitted an affidavit from [REDACTED] who is neither a United States citizen nor a lawful permanent resident.

On appeal, the applicant asserts that the affidavits submitted are verifiable and are credible. She submits the following attestations as evidence:

- An affidavit dated February of 2007 from [REDACTED] in which she states that she is reiterating her statement made in her affidavit written October of 2005 and that she is providing a contact telephone number.
- An affidavit dated February of 2007 from [REDACTED] in which she states that she is reiterating her statement made in her affidavit written September of 2005 and that she is now providing a contact telephone number.
- An affidavit dated February of 2007 from [REDACTED] in which he states that he is confirming and clarifying his statement made in his affidavit dated November 9, 2005 and he also apologizes for failing to answer his phone when the service called.

The affiants are reiterating and confirming statements they made in 2005, which have been examined by the AAO and determined to be of minimal probative value.

The applicant also submits the following affidavit:

- An affidavit from [REDACTED] in which she states that she has personally known and been acquainted with the applicant since they lived in Mexico. She states that she and the applicant grew up together in the same city and that she is aware of the applicant immigrating to the United States in October of 1981. She further states that she, herself immigrated to the United States in 1986, and that at that time was reacquainted with the applicant. Here, the affiant has failed to demonstrate first hand knowledge of the applicant's arrival in the United States, and the whereabouts and circumstances of her residence in the United States during the requisite period. The affiant has also failed to specify the frequency with which she saw and communicated with the applicant during the requisite period.

In the instant case, the applicant has failed to submit sufficient evidence or argument to overcome the grounds for the director's denial. The affidavits submitted are inconsistent with statements made by the applicant and are lacking in detail. Although the applicant claims to have resided in the United States since she was thirteen years old, she has provided neither school records nor immunization records to substantiate such claim. She has also failed to

provide any evidence from or about any responsible adult or guardian to indicate the circumstances of how she survived during her childhood and throughout the requisite period.

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 affidavits that are inconsistent with his statements and that have little probative value, it is concluded that he 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.