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FILE:

MSC-06-066-11251

Office: NEW YORK

Date:

SEP 29 2008

IN RE:

Applicant:

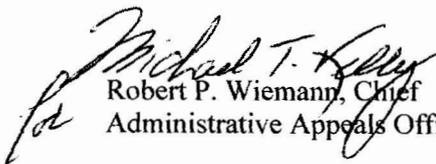
APPLICATION:

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:

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 (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 December 5, 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 was a minor during the requisite period and did not submit school or medical records. In addition, the director stated that the applicant did not provide "primary evidence of an adult responsible for [the applicant's] care and financial support." 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, counsel submitted a Form I-694 Notice of Appeal of Decision Under Section 210 or 245A, several affidavits, and a brief. On appeal, counsel states that "the most significant issue raised in the decision involves the preparation of the supporting affidavits." Counsel also states that the applicant no longer has evidence of her visit to Canada in June 1984 because "it has been a long time since she traveled." Counsel explains that the applicant does not have school or immunization records to provide because she "belongs to a very conservative Muslim family where girls are permitted to only attend Islamic school and in the 1980s there were no Islamic schools for her to attend." Finally, counsel argues that the applicant was thirteen years old in 1981 and should not be expected to keep medical or immunization records.

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.

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 continuously resided in the United States for the requisite period.

The applicant has submitted several affidavits, letters, and a passport issued in New York on October 29, 2005. The applicant's passport is evidence of the applicant's identity, but does not demonstrate that she entered before January 1, 1982 and resided in the United States for the requisite period.

Some of the evidence submitted indicates that the applicant resided in the United States after May 4, 1988 and is not probative of residence before that date. The following applies to the requisite time period:

- Two affidavits from [REDACTED] dated February 10, 2006 and February 22, 2007. In her affidavits, the affiant states that she personally knows the applicant and provides addresses for the applicant from February 1981 to the present. Although the addresses provided are consistent with the addresses included in the applicant's Form I-687, the dates provided in the affidavit for those addresses are not consistent with the dates in the Form I-687. The affiant also states that she knows the applicant "very well" and has known the applicant since the applicant arrived in the United States "around February 1981." The affiant states that the applicant used to visit her and take "advice about various medical needs." Although the affiant states that she has known the applicant since 1981, the statement does not supply enough details to lend credibility to a 25-year relationship with the applicant. For instance, the affiant does not indicate where she first met the applicant in the United States, how she dates her initial meeting with the applicant, or how frequently she had contact with the applicant. Given these deficiencies, these affidavits have minimal 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.
- Two affidavits from [REDACTED] dated February 11, 2006 and February 22, 2007. In her affidavits, the affiant states that she personally knows the applicant and provides addresses for the applicant from February 1981 to the present. Although the addresses provided are consistent with the addresses included in the applicant's Form I-687, the dates provided in the affidavit for those addresses are not consistent with the dates in the Form I-687. The affiant also states the applicant lived at her house "located at [REDACTED] York from October 1985 to May 1999" because the applicant needed a place to live. The affiant states that she "helped" the applicant and that the applicant is "a family friend." The affiant adds that she still keeps in touch with the applicant and she has invited the applicant for "several religious gatherings" and other social "functions and parties." Although the affiant indicates that she has known the applicant since 1981 by providing addresses for the applicant beginning in February 1981, the statement does not supply enough details to lend

credibility to a 25-year relationship with the applicant. For instance, the affiant does not indicate when or where she first met the applicant in the United States, how she dates her initial meeting with the applicant, or how frequently she had contact with the applicant. Further, the affiant does not indicate who the applicant lived with from February 1981 to September 1985 or who supported her during that time. Given these deficiencies, these affidavits have minimal 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.

- Two affidavits from [REDACTED] dated January 30, 2006 and February 22, 2007. In his affidavits, the affiant states that he personally knows the applicant and provides addresses for the applicant from February 1981 to the present. Although the addresses provided are consistent with the addresses included in the applicant's Form I-687, the dates provided in the affidavit for those addresses are not consistent with the dates in the Form I-687. The affiant also states that he has personal knowledge that the applicant has lived in the United States "since February 1981" and that from "February 1981 to February 1983" the applicant lived in an apartment that was "very close" to the affiant's house. The affiant adds that the applicant and his wife became "close friends and would often visit each other on weekends for dinner." The affiant states that the applicant became a "very good family friend" and would frequently attend "gatherings and parties" at his house. The affiant adds that after the applicant moved to Brooklyn in March 1983, they "still kept in touch and met occasionally on holidays and [at] parties." Although the affiant states that he has known the applicant since 1981, the statement does not supply enough details to lend credibility to a 25-year relationship with the applicant. For instance, the affiant does not indicate where he first met the applicant in the United States, how he dates his initial meeting with the applicant, or how frequently he had contact with the applicant. Further, the affiant does not state who the applicant lived with from 1981 to 1983 or who supported her during that time. Given these deficiencies, these affidavits have minimal 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 form-letter signed by [REDACTED]** The declarant states that he personally knows the applicant and provides addresses for the applicant from February 1981 to the present. The declarant also states that he has known the applicant since she came to live here in February 1981 and that the applicant used to visit his house and became a friend of his wife. Although the affiant states that he has known the applicant since 1981, the statement does not supply enough details to lend credibility to a 25-year relationship with the applicant. For instance, the affiant does not indicate where he first met the applicant in the United States, how he dates his initial meeting with the applicant, or how frequently he had contact with the applicant. Further, the affiant does not state who the applicant lived with from 1981 to 1983 or who supported her during that time. Given these deficiencies, this affidavit has minimal 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.

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 February 1981. 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 January 11, 2006. The director denied the application for temporary residence on January 24, 2007. 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, counsel states that "the most significant issue raised in the decision involves the preparation of the supporting affidavits." Counsel provides new affidavits from affiants already in the record of proceeding. The affidavits provided by counsel do not provide much, if any, additional information from the affiants and can only be given minimal 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.

In his appeal brief, counsel states that the applicant no longer has evidence of her visit to Canada in June 1984 because "it has been a long time since she traveled." Counsel also explains that the applicant does not have school or immunization records to provide because she "belongs to a very conservative Muslim family where girls are permitted to only attend Islamic school and in the 1980s there were no Islamic schools for her to attend."

According to the applicant's Form I-687 and passport, the applicant's date of birth is July 13, 1968. Therefore, the applicant was 12 years old when she claims to have entered the United States in February 1981, and she turned 18 years old on July 13, 1988. The applicant was a minor during the entire requisite time period and as a minor in a foreign country, there is an expectation that there would be someone responsible for the applicant's care and financial support. Counsel assertions that the applicant is a member of a "conservative Muslim family" where a girl is only permitted religious education create further doubts that the applicant would be permitted to live alone. 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). In part #33 of the Form I -687, the

applicant states that she was supported and helped by community leaders. The record of proceeding contains no evidence of a guardian or person directly responsible for the applicant's care or financial support, none of the affiants' statements mention such a person, and there is no clarification as to what "supported and helped by community leaders" entailed. In her decision, the director stated that the applicant did not provide "primary evidence of an adult responsible for [the applicant's] care and financial support" and neither counsel nor the applicant have addressed this on appeal.

Counsel argues that the applicant was thirteen years old in 1981 and should not be expected to keep medical or immunization records. However, the applicant was 37 years old when she filed the Form I -687 on December 5, 2005. While a thirteen year old might not be expected to keep medical or immunization records, an adult is capable of locating and obtaining copies of her own records.

As noted above, 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. 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.