



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED]
MSC-05-222-11165

Office: LOS ANGELES

Date: DEC 20 2007

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. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

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, California. 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 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 eligibility for temporary residence status.

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. See the CSS Settlement Agreement, paragraph 11 at page 6 and the 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.* 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 (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 submitted sufficient credible evidence to establish continuous residence in the United States from prior to January 1, 1982 through the date she attempted to file a Form I-687 application with the Service in the original legalization application period from May 5, 1987 to May 4, 1988. Here, the applicant has failed to submit sufficient evidence to support her claim of residence in this country for the period in question.

The record shows that the applicant submitted a Form I-687 application and Supplement, which she signed under penalty of perjury, to Citizenship and Immigration Services (CIS) on May 10, 2005. At part #30 of the Form I-687 application where the applicant was asked to list all residences in the United States since first entry, the applicant listed [REDACTED] Mendota, California, as her address from April of 1985 to June of 1986; and [REDACTED], Laguna Beach, California, from July of 1986 to November of 1991. Similarly, at part #33, the applicant showed that she was employed as agricultural worker for [REDACTED] in Firebaugh, California, from May of 1986 to May of 1986; and that she was employed by [REDACTED] in Tustin, California, from June of 1986 to December of 1989.

The applicant initially submitted copies of her children's United States birth certificates and joint income tax returns for the 1990 through 1996 tax years. These documents are dated subsequent to the requisite period; and therefore, will not be considered as relevant in evaluating the applicant's eligibility for the benefits sought.

In an attempt to establish continuous unlawful residence in the United States since prior to January 1, 1982, the applicant provided the following attestations:

- A letter from [REDACTED] who stated that the applicant has been like a daughter to her since 1986, and that the applicant and her family have helped her in many ways. [REDACTED] also stated that the applicant was honest and hardworking. The statement made by [REDACTED]

██████████ is inconsistent with the applicant's statement that she made on her Form I-687 application, at part #33, where it asks the applicant to list her employment history in the United States. The applicant in response to the question listed ██████████ as her employer from June of 1986 to December of 1989. The applicant also stated during her interview under oath that she had been employed by ██████████. In contrast, ██████████ does not state that she employed the applicant, how long she was employed, or in what capacity she was employed. Furthermore, there has been no evidence submitted such as employee tax records, payroll records, bank statements, or cancelled checks, to substantiate the applicant's employment claim. This inconsistency calls into question ██████████ ability to confirm that the applicant resided in the United States during the requisite period. Because this letter contains statements that conflict with what the applicant showed on her Form I-687 and testified to under oath, doubt is cast on the assertions made. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt 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 (BIA 1988).

There is no evidence to demonstrate that ██████████ was acquainted with the applicant prior to January 1, 1982, to corroborate the applicant's claim of residence in the United States during that requisite period. She has failed to specify the frequency with which she saw the applicant during the requisite period. ██████████ has not provided evidence that she herself was present in the United States during the requisite period. Though not required to do so, she has not included proof of her identity with this affidavit. It is also noted that ██████████ fails to list the applicant's address(es) in the United States during the requisite time period. Because the statement conflicts with other evidence in the record, and because it is significantly lacking in detail, it cannot be accorded any weight in establishing that the applicant resided in the United States during the requisite period.

- An affidavit dated April 11, 2005, from ██████████ president of ██████████ Contractor in which he stated that he employed the applicant as an agricultural worker from May 1, 1985 to May 1, 1986, for a total of one hundred five (105) days. He further stated that he was unable to provide payroll records because they had been destroyed because they were outdated. He concluded by stating that he recognized the applicant because they had entered into yearly employment contracts. He also submitted a copy of a seasonal agricultural worker affidavit (Form I-705) that contained the information noted above. The statement made by the affiant is inconsistent with the applicant's statement on Form I-687, at part #33 where she indicated that she was employed by ██████████ as an agricultural worker from May of 1986 to May of 1986. This inconsistency calls into question the affiant's ability to confirm that the applicant resided in the United States during the requisite period. Because this affidavit contains statements that conflict with what the applicant showed on her Form I-687 application, doubt is cast on the assertions

made. It is further noted that the affiant's statement is not accompanied by evidence that he resided in the United States during the requisite period, and it lacks sufficient details of his relationship with the applicant. It is also noted that the affiant only attests to the applicant being employed for 105 days out of the year. Though not required to do so, the affiant has not included proof of his identity with this affidavit. Because the statement conflicts with other evidence in the record, and because it is lacking in detail, it can be accorded only minimum weight in establishing that the applicant resided in the United States during the requisite period.

In denying the application, the director noted that the applicant stated under oath during her interview with Citizenship and Immigration Services (CIS) that she arrived in the United States for the first time in August of 1981, left the United States to Mexico in December of 1987, and returned in that same month. In contrast, the director noted that the applicant reported on her I-687 application that her last entry into the United States was in April of 1985, and that her residence in America did not start until April of 1985. The director further noted that the applicant had submitted a letter from [REDACTED] and an employment affidavit from [REDACTED] that were not credible and insufficient to establish her eligibility for the benefits sought.

On appeal, the applicant states that she is eligible for the benefits sought in that she entered the United States in August of 1981; was employed by [REDACTED] from November of 1981 to May of 1986; and that she was employed by [REDACTED] from June of 1986 to December of 1989. The applicant also states that she lived at [REDACTED], Mendota, California, from September of 1981 to June of 1986; and [REDACTED] Laguna Beach, California, from July of 1986 to May of 1992. She says that she last came to the United States in April of 1985. The applicant indicates that she testified truthfully during her interview with CIS and that any discrepancies made were minor, and was due to the lapse of time. The applicant submits the following affidavit on appeal:

- An affidavit dated May 30, 2006, from [REDACTED] of [REDACTED] Contractor in which he stated that he employed the applicant as an agricultural worker from September of 1981 to April of 1985, for a total of one hundred (100) estimated days for each year. He further stated that he was unable to provide payroll records because they had been completely destroyed because they were outdated. He concluded by stating that he recognized the applicant because they had entered into yearly employment contracts. He also submitted a copy of a seasonal agricultural worker affidavit (Form I-705) that contained the information noted above. The statement made by the affiant is inconsistent with the applicant's statement on Form I-687, at part #33 where she indicated that she was employed by [REDACTED] as an agricultural worker from May of 1986 to May of 1986. It is noted that in the initial affidavit from [REDACTED], he stated that the applicant had been employed from May 1, 1985 to May 1, 1986. There has been no plausible explanation given for the change in the applicant's dates of employment subsequent to the director's denial. Again, this inconsistency calls into question the affiant's ability to confirm that the applicant resided in the United States during the requisite period. Because this affidavit contains statements that conflict with what the applicant showed on her Form I-687

application, doubt is cast on the assertions made. It is further noted that the affiant's statement is not accompanied by evidence that he resided in the United States during the requisite period, and it lacks sufficient details of his relationship with the applicant. It is also noted that the affiant only attests to the applicant being employed by his company for only 100 days out of the year. Though not required to do so, the affiant has not included proof of his identity with this affidavit. Because the statement conflicts with other evidence in the record, and because it is lacking in detail, it can be accorded only minimum weight in establishing that the applicant resided in the United States during the requisite period.

The applicant presents multiple conflicting statements and evidence therefore; independent objective evidence is required to support her claim of eligibility. There is nothing in the record to demonstrate that the applicant determined that she had made a mistake during her interview or on her I-687 application, and attempted to correct the same. The applicant stated during her interview and on her I-687 application, part #32 that she traveled to Mexico in December of 1987, and returned that same month. On appeal, she states that in part #16 of her I-687 application she indicated that she last entered the United States on April 10, 1985. Because the statements and evidence are inconsistent, and no independent objective evidence has been presented to explain the inconsistencies, doubt is cast on the assertions made as they relate to the applicant's residence in 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. *Matter of Ho, supra.*

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the requisite period. She has failed on appeal to overcome the director's reasons for denial of the I-687 application. The affidavits from [REDACTED] and the letter from [REDACTED] conflict with other evidence in the record and are significantly lacking in detail.

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 contradictory statements on her application and during her interview, and her 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.