



U.S. Citizenship
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[REDACTED]

FILE: [REDACTED]
MSC-05-197-14511

Office: LOS ANGELES, CA

Date: DEC 26 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:

[REDACTED]

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. 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 April 15, 2005. 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, the director noted that documents in the record and the applicant's testimony regarding her addresses of residence during the requisite period were not consistent. The director further noted that information regarding the applicant's employment during the requisite period was not consistently shown in documents in the record. The director denied the application as she determined 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 that she is eligible to adjust status to that of a Temporary Resident. She submits a statement in support of her application.

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).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "until the date of filing" shall mean until the date the applicant attempted to file a completed Form I-687 application and fee to the Immigration and Naturalization Service (the Service, now Citizenship and Immigration Services or CIS) or was caused not to timely file. 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).

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 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 resided 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 of May 5, 1987 to May 4, 1988. Here, the submitted evidence is not relevant, probative, and credible.

The record shows that the applicant submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on April 15, 2005. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant showed her addresses in the United States during the requisite period to be: [REDACTED] in Mendota, California from October 1981 until May 1986; and [REDACTED] in Anaheim, California from June 1986 until May 1992. It is noted that the record shows that applicant first indicated that she lived in Mendota beginning in April of 1985 but the applicant's Form I-687 appears to have been amended at the time of her interview with a CIS officer to show that she lived at that address since 1981. At part #33 of her application, where the applicant was asked to show all of her employment since she first entered the United States, she stated that she was employed by [REDACTED] Brothers in Mendota, California from May 1985 until May 1986 and then as a Child Day Care provider in Santa Ana, California from June 1986 until the present. It is noted that the applicant did not indicate she was employed in the United States prior to May 1985 on her application.

The applicant has the burden of proving by a preponderance of the evidence that she has resided in the United States for the requisite period. 8 C.F.R. § 245a.2(d)(5). To meet her burden of proof, an applicant must provide evidence of eligibility apart from her own testimony. 8 C.F.R. § 245a.2(d)(6). The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that an applicant may submit to establish proof of continuous residence in the United States during the requisite period. This list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts or letters. An applicant may also submit any other relevant document pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982 and then for the duration of the requisite period, the applicant provided the following:

- An affidavit from [REDACTED] signed on December 9, 2005. Though not required to do so, the affiant submitted a photocopy of her Permanent Resident Card as proof of her identity. In her

affidavit, the affiant states that she knows that the applicant has resided in Mendota, California from December 1981 until the date that the affiant signed the affidavit in December 2005. It is noted that on the applicant's Form I-687, she showed that she lived in Mendota, California from October 1981 until May 1986, after which time she showed she resided in Anaheim and then Santa Ana, never returning to Mendota. Here, the affiant fails to indicate where and when she met the applicant, and whether that meeting took place in the United States. She does not state the frequency with which she saw the applicant during the requisite period or state whether there were periods of time during which she did not see the applicant during that time. The affiant further fails to offer proof that she herself was in the United States during the requisite period. Because this affidavit contains information regarding the applicant's address of residence that is not consistent with what the applicant showed as her address of residence on her Form I-687, doubt is cast on the assertions made in this affidavit regarding that address.

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 will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

- An affidavit from [REDACTED] signed on December 9, 2005. Though not required to do so, the affiant submitted a photocopy of her Permanent Resident Card and a copy of her California Driver's License as proof of her identity. Here, the affiant states that she knows that the applicant has resided in Mendota, California from December 1981 until the date she signed the affidavit. It is noted that on her Form I-687 the applicant showed that she lived in Mendota, California from October 1981 until May 1986, after which time she resided in Anaheim and then Santa Ana, never returning to Mendota. Here, the affiant fails to indicate where and when she met the applicant, and whether that meeting took place in the United States. She does not state the frequency with which she saw the applicant during the requisite period or state whether there were periods of time during which she did not see the applicant during that time. The affiant further fails to offer proof that she herself was in the United States during the requisite period. Because this affidavit contains information regarding the applicant's address of residence that is not consistent with what the applicant showed on her Form I-687, doubt is cast on the assertions made in this affidavit.
- An affidavit from [REDACTED] signed on December 9, 2005. Though not required to do so, the affiant submitted a photocopy of her Permanent Resident Card and a photocopy of her California Identification Card as proof of her identity. In her affidavit, the affiant states that she knows that the applicant has resided in Santa Ana, California from November 1987 until the date she signed the affidavit. It is noted that the applicant showed that she lived in Anaheim, California from June 1986 until December 1997, only moving to Santa Ana, California in January 1998 on her Form I-687. Here, the affiant fails to indicate where and when she met the applicant, and whether that meeting took place in the United States. She does not state the frequency with which she saw the applicant during the requisite period or state whether there were periods of time during which she did not see the applicant during that time. The affiant further fails to offer proof that she herself was in the United States during the requisite period. Because this affidavit contains information regarding the applicant's address of residence that is not consistent with what the applicant showed on her Form I-687, doubt is cast on the assertions made in this affidavit regarding the applicant's address of residence during the requisite period. Because this affidavit only pertains to part of the requisite

period, this affidavit carries no weight in establishing that the applicant resided continuously in the United States for the duration of that time.

- An employment verification letter from [REDACTED] president of [REDACTED] Brothers, dated December 21, 2005. In this letter, Mr. [REDACTED] states that all of his employment records and associated documents were destroyed in a fire but he knows that the applicant worked for him from November of 1981 until April of 1985 performing agricultural duties. It is noted that on her Form I-687, the applicant indicated that she did work for [REDACTED] Brothers. However, she showed that she only worked for them from May of 1985 to May of 1986. Because the dates shown on this employment verification letter conflict with the dates the applicant indicated that she worked for this company, doubt is cast on the assertions made in this letter.
- A second employment verification letter from [REDACTED] president of [REDACTED] Brothers, dated April 6, 2005. In this letter, Mr. [REDACTED] again states that all of his employment records and associated documents were destroyed in a fire, but he knows that the applicant worked for him from May 1, 1985 until May 1, 1986 performing agricultural duties. Though this letter verifies employment that the applicant showed on her Form I-687, the existence of a subsequent letter from this same employer that is not consistent with what the applicant showed on her Form I-687 casts doubts on assertions made by this employer. Further, this employment verification letter pertains to only one year of the requisite period. Therefore, this letter carries no weight in establishing that the applicant resided continuously in the United States for the duration of the requisite period.

Though the applicant submitted tax documents with her application, these documents are from years subsequent to May 4, 1988 therefore they establish that the applicant was present in the United States after the requisite period. The issue in this proceeding is the applicant's residence in the United States during the requisite time period. Because these documents verify the applicant's presence in the United States subsequent to the requisite time period, they are not relevant evidence for this proceeding.

Thus, on the application, which the applicant signed under penalty of perjury, she showed that she resided in the United States since October 1981 and worked in the United States since May 1985. Though the applicant submitted three (3) affidavits from individuals as proof that she resided continuously in the United States during the requisite period, all three (3) affidavits contain testimony regarding the applicant's addresses of residences that is not consistent with what the applicant showed as her addresses of residents on corresponding dates on her Form I-687. Though the applicant indicated that she worked in the United States since May of 1985 on her Form I-687, she submitted evidence from that employer that stated that she began working for him in 1981.

In denying the application the director noted the above, and stated that the evidence submitted by the applicant in support of her application did not allow her to establish, by a preponderance of the evidence that she resided continuously in the United States for the duration of the requisite period.

On appeal, the applicant attempts to explain these contradictions. She submits a statement dated June 12, 2006, in which she states that she has resided continuously in the United States for the duration of the requisite period. She states that she entered the United States in October 1980. It is noted here that the applicant previously indicated that she resided in the United States since October 1981. The applicant goes on to say that she did work for [REDACTED] Brothers from November of 1981 until April of 1985 and then continued working for them from May of 1985 until May of 1986. However, it is noted that this is not consistent with what she showed on her Form I-687. The applicant asserts that she was a credible witness

at the time of her interview. She asserts that the discrepancies found in the record are the result of the passage of time. She asserts that evidence she submitted with her application verifies her residence. The applicant did not submit additional evidence with her statement.

Though the applicant asserts that she is a credible witness, the regulation at 8 C.F.R. § 245a.2(d)(6) states that applicants for adjustment of status to that of a Temporary Resident must submit evidence apart from their own testimony to establish that they are eligible for this benefit. Here, the evidence submitted by the applicant is not consistent with what the applicant showed on her Form I-687. Therefore, the evidence that she previously submitted does not allow the applicant to establish that she is eligible for this benefit.

As is stated above, 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. at 79-80. The applicant has been given the opportunity to satisfy her burden of proof with a broad range of evidence pursuant to 8 C.F.R. § 245a.2(d)(3). However, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period, and has submitted attestations from only three (3) people concerning that period, all of which provide testimony regarding the applicant's residence that is not consistent with what she showed on her Form I-687. She did not submit any additional evidence to establish that she had maintained continuous residence 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 contradictory statements in evidence submitted by the applicant 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 from prior to January 1, 1982 through the date she attempted to file a Form I-687 application 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.