



U.S. Citizenship
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FILE:

MSC 05 175 10761

Office: Los Angeles

Date: **SEP 07 2007**

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. 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, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined the applicant had not demonstrated that she had continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that she attempted to file a Form I-687, Application for Status as a Temporary Resident, with the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS) in the original legalization application period of May 5, 1987 to May 4, 1988. Therefore, the director determined that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and denied the application.

On appeal, the applicant asserts that she has lived in the United States since prior to January 1, 1982 and provides copies of W-2 statements naming her as the employee under a different social security number.

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 Immigration and Nationality Act (Act), 8 U.S.C. § 1255a(a)(2).

An applicant applying for adjustment to temporary resident status must 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).

For purposes of establishing residence and presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the alien attempted to file a completed Form I-687 application and fee or was caused not to timely file, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

An alien applying for adjustment of status 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. *See* 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 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 on March 24, 2005. With regard to the request for the applicant's employment history, No. 33 of the Form I-687, the applicant indicated that from December 1981 until April 1987 she worked as a farm laborer in Bakersfield and Kern counties in the State of California. The applicant did not specify the names of any of the farms or the farm labor contractors that purportedly employed her during this relevant time period. Additional documents the applicant submitted in support of her Form I-687 application include the following:

1. Form SSA-7008, Request for Correction of Earnings Record, filled out by the applicant. The applicant provided all of the names she used during the course of her work as well as the two social security numbers she claims to have used. One social security number, [REDACTED] was lawfully assigned to her by the Social Security Administration (SSA), as evidenced by a copy of the applicant's social security card and a service letter dated December 8, 1987. The origin and validity of the second number, [REDACTED] are unclear. The Form SSA-7008 addresses wages the applicant claimed to have earned from 1984-1986, and is accompanied by photocopies of the W-2 wage and tax statements for the corresponding years during which the applicant claimed employment under the social security number [REDACTED]. She indicated that in 1984 she worked at Thermiculture Vineyards and in 1985 and 1986 at [REDACTED].

2. Another Form SSA-7008 in which the applicant again provided all the names she purportedly used during her farm labor employment as well as the social security numbers cited above. In Item 7 of the form, the applicant listed her purported employment in 1981, 1982, and 1983. The applicant indicated that in 1981 and 1982 she worked for [REDACTED] and in 1983 at Thermiculture Vineyards. Again, the applicant provided photocopies of the corresponding W-2 wage and tax statements for all three years of employment. All three statements show the applicant's social security number to be [REDACTED]
3. An affidavit from [REDACTED] dated October 15, 2005. The affiant claimed that she has known of the applicant's residence in the United States since the summer of 1981. She also identified the applicant as [REDACTED] and stated that she worked with the applicant at Cy Mouradick Company from 1981 to 1984 and with JH Meidel Company from 1985 to 1986. The affidavit was accompanied by photocopies of the W-2 statements purportedly belonging to the applicant accounting for each year attested to by the affiant. It is noted that the applicant's social security number as it appears on these five W-2 statements is [REDACTED]
4. The applicant's social security statement dated August 16, 2000 showing that the applicant earned wages in 1987, 1988, and 1989.

In reviewing the supporting evidence provided by the applicant, the AAO concludes that a significant portion of the documentation lacks credibility and may, in fact, be fraudulent based on the inconsistencies observed. First, there is no supporting evidence to show how the applicant was able to obtain a second, and purportedly a third, social security number in addition to the one assigned to her by the SSA. If the applicant was able to obtain a social security statement showing her earnings from 1987-1989, it is unclear why, if she had another social security number, she was unable to note that and obtain further documentation from the SSA showing the additional earnings she purportedly earned from 1981-1986.

Second, the applicant failed to specifically identify any of her farm labor employment during the crucial period of 1981-1986 when listing her various employers in her Form I-687. As such, the information provided on her application cannot be verified with the barely legible copies of W-2 wage and tax statements the applicant submitted along with the various Form SSA-7008s. The applicant provided no reason for not having submitted the original wage and tax statements.

Third, and most important, the affidavit and W-2 wage and tax statements submitted in support thereof are inconsistent with the claims and supporting documentation the applicant provided with regard to the wages earned and the places of employment during certain portions of the relevant statutory time period. More specifically, the applicant provided a photocopied W-2 for 1982 that shows she worked at Cy Mouradick & Sons and earned \$3,717.00 while using social security number [REDACTED]. The applicant submitted an affidavit with attached copies of W-2's. The affiant's W-2, also purportedly belonging to the applicant, shows a different social security number [REDACTED] and indicates that the applicant earned \$3,218.22 for the same tax period and with the same employer. Similarly, for 1983, the applicant provided a photocopied W-2 showing that she worked for Thermiculture Vineyards and earned \$3,470.00

while using social security number 518-57-4694. However, the W-2 statement submitted by the affiant for the same time period indicates that the applicant was employed at Cy Mouradick & Sons and earned of \$3,478.00. While the applicant and the affiant both submit W-2 statements showing the same salary for 1984, the affiant claimed that she earned those wages while working at Thermaculture Vineyards, while the affiant provided a W-2 statement indicating that the applicant was employed that year at Cy Mouradick & Sons. Similarly, with regard to the applicant's 1985 earnings, the W-2s submitted by the applicant and the affiant show the same salary of \$3,482.08. However, the W-2 submitted by the applicant identifies her employer as Cy Mouradick & Sons, while the W-2 submitted by the affiant identifies [REDACTED]

Thus, in summary, the applicant's claim regarding her continuous residence from 1981 through 1986 is entirely supported by inconsistent and possibly fraudulent documentation as discussed above. 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). In the present matter, the variety of social security numbers and the inconsistent salaries and places of work as given by the applicant and the sole affiant attesting to the applicant's residence gives rise to doubt as to the validity of the documents submitted and the applicant's claim in general. The considerable inconsistencies cited above have neither been acknowledged nor reconciled by the necessary documentation.

Accordingly, the AAO concludes that the applicant 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.