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U.S. Citizenship
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FILE:

MSC-06-088-16939

Office: PORTLAND

Date:

APR 15 2008

IN RE:

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.

A handwritten signature in black ink, appearing to read "R. Wiemann", written over a horizontal line.

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

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 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. 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 a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to Citizenship and Immigration Services (CIS) on December 27, 2005. The applicant signed this form under penalty of perjury, certifying that the information she provided is true and correct. 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 indicated her first residence in the United States to be at [REDACTED], Los Angeles California from 1993 until 1995. No earlier addresses were listed.

On September 7, 2006 the applicant stated in her interview with a CIS officer that she first entered the United States on February 10, 1981 and remained in the United States “until 1986.” The applicant provided no evidence of entry into the United States or continuous residence in the United States prior to 1993. The applicant was a child (approximately 9 years old) in 1981 and she testified in her interview that she did not attend school in the United States.

In support of her initial I-687 application, the applicant submitted five affidavits. None of the affidavits refer to her residence during the statutory period of January 1, 1982 through May 4, 1988. In fact, all five of the affidavits refer to time periods subsequent to the year 2000.

On appeal, the applicant submitted a personal statement indicating that she “misplaced the documentation” that proves that she resided in the United States during the requisite period. She also submitted five additional documents:

1. A notarized letter dated November 16, 2006 from [REDACTED]. Mr. [REDACTED] indicated that he has known the applicant since 1985. Mr. [REDACTED] did not indicate how frequently or under what circumstances he saw the applicant during the requisite period, nor did he provide any other details regarding the events and circumstances of the applicant's residence in the United States that would tend to lend probative value to his statement. Moreover, he did not specifically state that he has direct, personal knowledge that the applicant continuously resided in the United States during the requisite period. For these reasons, this letter can be given only minimal weight as corroborating evidence.

2. A notarized letter dated October 25, 2006 from [REDACTED] Mr. [REDACTED] indicated that he has known the applicant since 1995, which is outside of the requisite period of January 1, 1982 through May 4, 1988. Thus, this letter can be accorded no weight as corroborating evidence.
3. A letter dated October 13, 2006 from [REDACTED] Ms. [REDACTED] indicated that she has known the applicant since 1988. She did not indicate how frequently or under what circumstances she saw the applicant during the requisite period, nor did she provide any other details regarding the events and circumstances of the applicant's residence in the United States that would tend to lend probative value to her statement. Moreover, she admits to meeting the applicant "in 1988." Since she does not specify what point in 1988 she met the applicant, her letter merely provides evidence that the applicant was present in the United States at some point in 1988 and is therefore not probative of whether the applicant continuously resided in the United States from January 1, 1982 through May 4, 1988. It will therefore be given minimal weight as corroborating evidence.
4. A handwritten letter dated October 17, 2006 from [REDACTED]. Ms. [REDACTED] indicated that she has known the applicant since 1987. The same deficiencies discussed above also apply to this letter. The fact that Ms. [REDACTED] states that she met the applicant in 1987 falls significantly short of establishing that Ms. [REDACTED] has direct, personal knowledge of the beneficiary's continuous residence in the United States for the duration of the requisite period.
5. A handwritten letter dated October 17, 2006 from [REDACTED], which is essentially identical in content to the letter submitted previously and is therefore deficient for the same reasons discussed above.

As discussed above, the letters submitted are significantly lacking in detail and do not establish that the individuals actually had personal knowledge of the events and circumstances of the applicant's residence in the United States. The letters provided are so deficient in detail that they can be given no significant probative value. Further, this applicant has provided no contemporaneous evidence of residence in the United States relating to requisite period.

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. 77, 79-80 (Comm. 1989). 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).

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 letters 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.