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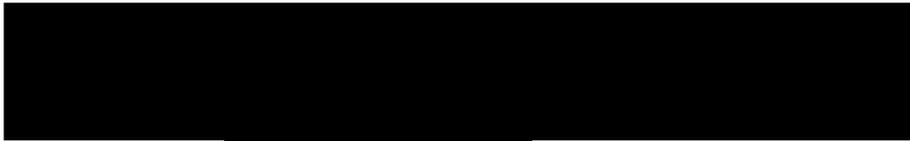
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
and Immigration
Services

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PUBLIC COPY



FILE: [REDACTED]
MSC-05-216-12618

Office: LOS ANGELES

Date: FEB 29 2008

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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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. 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 states that she was manipulated and misrepresented by the person who assisted her in filling out her immigration applications. The applicant further states that the information on her Form I-687 application is incorrect, that she was absent from the United States from September of 1987 to October of 1987, and that she is submitting affidavits and evidence on appeal to substantiate her claim of 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* CSS Settlement Agreement paragraph 11 at page 6 and 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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his or 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 Supplement to Citizenship and Immigration Services (CIS) on May 4, 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 address in the United States to be [REDACTED] Calexico, California, from August of 1981 to September of 1987. Similarly, at part #33, she showed her first employment in the United States to be for Sun Valley Harvest Farm Labor in Borrego Springs, California, from September of 1981 to August of 1987. It is noted that the applicant did not indicate on her Form I-687 application any residence or employment from 1987 to 1996.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided voluminous documentation, and affidavits from Amalia Parga and Catarino and Alba Tovar, however, none of this relates to the requisite period.

The applicant submitted a letter of employment from [REDACTED] of Sun Valley Harvest in which he stated that the applicant was employed as a farm laborer harvesting produce from July of 1981 to August of 1987. He further stated that the applicant was paid cash, and that his statement was based upon personal knowledge rather than company records because the farm had ceased operations. The statement made by the declarant is inconsistent with the applicant's statement on Form I-687, at part #33 where she indicated that she was employed seasonally by the farm from September of 1981 to August of 1987. 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. In addition, this letter does not conform to regulatory standards for attestations by employers. Specifically, the letter does not state the address where the applicant resided during the employment period; nor is it accompanied by any personnel records, tax records, cancelled checks, or pay stubs to corroborate the claim. 8 C.F.R. § 245a.2(d)(3)(i).

In denying the application, the director noted that during her interview with Citizenship and Immigration Services (CIS) on February 15, 2006, the applicant verified that she left the United States in November of 1987 and did not return to the country until May of 1996. The director further noted that this information was consistent with the information found on the applicant's I-687 Application for Status as a Temporary Resident dated May 4, 2005. The director noted in contrast that the applicant stated on her I-589, Request for Asylum in the United States, and G325A, Biographic Information Application, that her date of entry into the United States was October of 1992.

On appeal, the applicant attempts to explain these discrepancies and submits as evidence a Form I-687, and copies of receipts from the California Department of Motor Vehicles and Social Security Administration dated 1989 through 1994. The applicant also submits affidavits from [REDACTED] and [REDACTED] and [REDACTED] all of who attest to knowing the applicant in the United States since 1987, 1989, and 1990 respectively.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the requisite period. Although the applicant states on appeal that she was absent from the United States from September of 1987 to October of 1987, she has not provided a plausible explanation for the multiple inconsistencies contained in the record with regard to her absence from the country; nor has she submitted corroborating documentary evidence to substantiate her claim. The five attestations submitted have minimum probative value and therefore, are insufficient to demonstrate her presence in the United States throughout the requisite period.

The absence of sufficiently detailed documentation to support and 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 applications 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.