



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED]
MSC-06-075-10341

Office: LOS ANGELES

Date: JUN 24 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:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

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 noted that the applicant had been absent from the United States for over 45 days. 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 claim of eligibility for temporary resident 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).

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) 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; 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).

An alien shall be regarded as having resided continuously in the United States if at the time of filing an application for temporary resident status, no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, through the date the application is filed, unless the alien can establish that due to emergent reasons the return to the United States could not be accomplished within the time period

allowed, the alien was maintaining residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.15(c)(1).

If the applicant's absence exceeded the 45-day period allowed for a single absence, it must be determined if the untimely return of the applicant to the United States was due to an "emergent reason." Although this term is not defined in the regulations, *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), holds that emergent means "coming unexpectedly into being."

On the applicant's Form I-687, Application for Status as a Temporary Resident, she claimed that she established a residence in the United States in February of 1980, and that she continuously resided in the United States since then. At part #32, where absences from the United States were to be listed, the applicant listed an absence from December of 1987 to January of 1988. The reason listed for the absence was "a family emergency." In contrast, the applicant stated under oath during an interview with immigration officials on April 18, 2006 that she was absent from the United States from December of 1987 to May of 1988, and that she first tried to apply for amnesty in May of 1989.

On appeal, the applicant asserts that she was nervous during her interview in April of 2006, which resulted in her confusing her employment dates and her dates of travel outside the United States. She further asserts that she was absent from the United States from December of 1987 to January of 1988, and that she applied for amnesty upon her return to the country. It is incumbent upon the applicant 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).

The applicant submitted as evidence, copies of pay statements from Cal-Pacific Poultry dated March of 1987 to December of 1987, and March 21, 1988 to September 18, 1988. The applicant also submitted copies of her 1987 and 1988 IRS Form 1040, U.S. Individual Income Tax Return and IRS Form W-2, Wage and Tax Statement. These documents are evidence of the applicant's presence in the United States during 1987 and 1988; however, it is insufficient to establish her residence since before January 1, 1982.

The applicant also submitted the following attestations:

- A letter dated October 9, 1990 from [REDACTED] of Cal-Pacific Poultry in which he stated that the applicant worked for him as a maid from 1981 to 1986, and that she was paid in cash.
- A letter dated March 14, 1991 from [REDACTED] of Cal-Pacific Poultry in which he stated that the applicant was employed as a maid at his residence on a part-time basis from February 5, 1981 to December 29, 1986.
- An undated letter from Cal-Pacific Poultry indicating that the applicant was employed by the company from 1981 to 1990.

- A letter from [REDACTED] dated July 17, 1990 in which she stated that she worked with the applicant at Cal-Pacific Poultry at [REDACTED], Pomona, California, from May of 1982 to May of 1985.
- An affidavit dated July 19, 1990 from [REDACTED] in which she stated that the applicant resided with her from January of 1982 to December of 1989. The affiant failed to state the address where they resided.

Here, the letters of employment do not conform to regulatory standards for attestations by employers at 8 C.F.R. § 245a.2(d)(3)(i). Specifically, the declarants do not specify the address(es) where the applicant resided throughout the claimed employment period, nor do they indicate the origins of their information.

In the instant case, the applicant has failed to submit sufficient credible evidence to establish her continuous residence in the United States throughout the requisite period. It appears from the record that the applicant was absent from the United States in excess of 45 days and that this absence was not due to an "emergent reason."

It is noted that the applicant submitted pay statements bearing the names [REDACTED], [REDACTED], and [REDACTED]. In an affidavit, the applicant stated that she used the name [REDACTED] from 1986 to 1987. The applicant has failed to submit independent documentation to show that she and [REDACTED] and [REDACTED] are the same persons. See 8 C.F.R. § 245a.2(d)(2).

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 documents with minimal probative value and her prolonged absence from the United States, 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.