



U.S. Citizenship
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FILE:


MSC-06-067-14059

Office: LOS ANGELES

Date: **MAY 01 2008**

IN RE:

Applicant: 

APPLICATION:

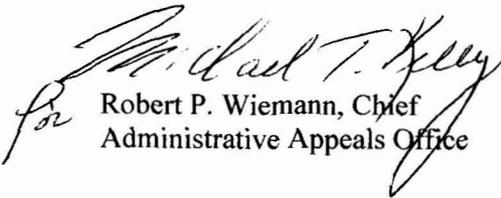
Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

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.


For 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 District. 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 December 6, 2005 (together, the I-687 Application). 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 as 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 submitted a timely Form I-694 Notice of Appeal of Decision Under Section 210 or 245A and a brief. The applicant submits copies of declarations already in the record of proceeding. In her brief, the applicant states that because she worked “under an undocumented status in the years 1981 through 1987, [she has] no record of taxes” and because she “paid all [her] bills in cash, [she has] no receipts.” As of this date, the AAO has not received any additional evidence from the applicant. Therefore, the record is complete.

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. 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).

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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.2(d)(6).

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. *See* 8 C.F.R. § 245a.2(d)(6). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The credibility of an affidavit may be assessed by taking into account such factors as whether the affiant provided some proof that he or she was present in the United States during the requisite period. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

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 entered before 1982 and resided in the United States for the requisite period.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on December 6, 2005. At part #30 of the Form I-687 application where applicants are asked to list all residences in the United States since first entry, the applicant listed her first address in the United States as [REDACTED], Huntington Park, from July 1979 to April 1999. At part #33, she stated that she did not work from 1979 to February 1981 and listed her first employment in the United States as a caregiver for [REDACTED]'s father in Los Angeles, California, from March 1981 to February 1982. At part #32, the applicant listed one absence from the United States since entry. According to the Form I-687, the applicant went to

Mexico for a family emergency from January 1981 to February 1987.¹ At part #31, the applicant did not list any affiliations or associations.

The applicant has provided one affidavit; six declarations; income tax returns for tax years 1989 to 2004; a copy of the applicant's California driver's license issued on July 17, 1989; copies of pay stubs for the work period ending on April 13, 1996 and on July 27, 1996; a copy of an AMA Laboratory receipt dated September 3, 2005; and a copy of the applicant's birth certificate. The applicant's California driver's license is evidence of the applicant's identity, but does not demonstrate that she entered before 1982 and resided in the United States for the requisite period. Some of the evidence submitted indicates that the applicant resided in the United States after the requisite period and is not probative of residence before that date. The following evidence relates to the requisite period:

- An affidavit from [REDACTED] dated December 5, 1989. The declarant lives in Arvin, California and states that the applicant worked under him from September 15, 1987 to November 20, 1987 picking grapes on Ranch Number 1 in Arvin, California. The declarant states that he worked as a "foreman under a farm labor contractor by the name of [REDACTED] who paid in cash and "kept no official records." The declarant does not indicate how he dates the applicant's employment. Furthermore, the work mentioned in the affidavit is not listed on the applicant's Form I-687. Given these deficiencies, this statement has minimal probative value in supporting the applicant's claims that she entered the United States prior to 1982 and resided in the United States for the entire requisite period.
- A declaration from [REDACTED] dated October 10, 2005. The declarant states that he has known the applicant since 1982. The declarant also states that at that time, he rented a room to the applicant's daughter. He states that he would see the applicant often when the applicant visited her daughter and that he met the applicant "because her daughter introduced" them. Although the declarant states that he has known the applicant for 23 years, the statement does not supply enough details to lend credibility to a 23-year relationship with the applicant. The statement is not notarized and it is not accompanied by any evidence that the declarant resided in California during the relevant period. The declarant does not indicate how he dates his initial acquaintance with the applicant or how frequently he had contact with the applicant. Given these deficiencies, this statement has minimal probative value in supporting the applicant's claims that she entered the United States prior to 1982 and resided in the United States for the entire requisite period.
- A declaration from [REDACTED] dated October 10, 2005. The declarant states that she has known the applicant since 1984. The declarant states that she worked with the applicant in 1984 and that the applicant "cleaned her store" for a few months. The declarant also states that she paid the applicant "\$120.00," but does not provide an hourly or weekly rate of pay. Although the declarant states that she has known the applicant for 21

¹ The record of proceeding contains interview notes from the applicant's April 19, 2006 interview. The notes list two trips during the requisite period. According to the interview notes, the applicant was absent from the United States from January 1981 to January 22, 1981 and from February 1987 to March 1987.

years, the statement does not supply enough details to lend credibility to a 21-year relationship with the applicant. The statement is not notarized and as with all of the witness statements in this record, it does not provide information that is sufficiently detailed and extensive to establish that the statement has a reliable factual foundation. The declarant does not indicate under what circumstances she met the applicant in 1984, how she dates her acquaintance with the applicant, an address where the applicant resided in the United States, or how frequently she had contact with the applicant. Furthermore, the work mentioned in the statement is not listed on the applicant's Form I-687. Given these deficiencies, this statement has minimal probative value in supporting the applicant's claims that she entered the United States prior to 1982 and resided in the United States for the entire requisite period.

- A declaration from [REDACTED] dated October 10, 2005. The declarant states that she has known the applicant since 1982. The declarant states that she worked with the applicant from 1982 to 1988 in Maywood, California. The declarant also states that she met the applicant "because she was also a worker there." Although the declarant states that she has known the applicant for 23 years, the statement does not supply enough details to lend credibility to a 23-year relationship with the applicant. The statement is not notarized and , as is true for all the witness statements in this record, it does not provide sufficiently specific and extensive details of contacts with the applicant so as to establish the statement's reliability. The declarant does not indicate under what circumstances she met the applicant in 1982, how she dates her acquaintance with the applicant, an address where the applicant resided in the United States, or how frequently she had contact with the applicant. Given these deficiencies, this statement has minimal probative value in supporting the applicant's claims that she entered the United States prior to 1982 and resided in the United States for the entire requisite period.
- A declaration from [REDACTED] dated October 10, 2005. The declarant states that she has known the applicant since 1979. The declarant states that the applicant lived with her from 1979 to 1989 in Huntington Park, California and in Compton, California. The declarant also states that she rented the applicant a room for \$200.00 a month. The declarant adds that the applicant's son lived there as well and that the applicant brought the applicant's son when he was "10 months old." Although the declarant states that she has known the applicant for 26 years, the statement does not supply enough details to lend credibility to a 26-year relationship with the applicant. The statement is not notarized and it is not accompanied by any evidence that the declarant resided in California during the relevant period. The declarant does not indicate under what circumstances she met the applicant in 1979 or how she dates her acquaintance with the applicant. Furthermore, the applicant only lists one address in Huntington Park, California from July 1979 to April 1999 on the Form I-687. Given these deficiencies, this statement has minimal probative value in supporting the applicant's claims that she entered the United States prior to 1982 and resided in the United States for the entire requisite period.

A declaration from [REDACTED] dated October 10, 2005. The declarant states that she has known the applicant since 1981. The declarant states that the applicant worked with her by "taking care of [her] father" and that her father paid the applicant \$110.00 per week. The declarant adds that the applicant worked for her father in Los Angeles, California. Although

the declarant states that she has known the applicant for 24 years, the statement does not supply enough details to lend credibility to a 24-year relationship with the applicant. The statement is not notarized and it is not accompanied by any evidence that the declarant resided in California during the relevant period. The declarant does not indicate under what circumstances she met the applicant in 1981, how she dates her acquaintance with the applicant, an address where the applicant resided in the United States, or how frequently she had contact with the applicant. Given these deficiencies, this statement has minimal probative value in supporting the applicant's claims that she entered the United States prior to 1982 and resided in the United States for the entire requisite period.

For the reasons noted above, the documents submitted in support of the applicant's claim have been found to lack credibility or to have minimal probative value as evidence of the applicant's residence and presence in the United States for the requisite period.

The remaining evidence in the record is comprised of the applicant's statements and application forms, in which she claims to have entered the United States in 1979 without inspection and to have resided for the duration of the requisite period in California. In a signed declaration dated September 6, 2005, the applicant states that she "began working as a housekeeper for the first two years" that she was in the United States. The work mentioned in the statement is not listed on the applicant's Form I-687. The applicant claims to have entered the United States in 1979 and according to the Form I-687 the applicant did not work from 1979 to February 1981. The applicant states that later she worked taking care of her friend [REDACTED] father and was paid in cash. In addition, the applicant states that in 1987 she "went to apply under the late amnesty lawsuit in Soto St., Los Angeles, California. [The applicant's] friend [REDACTED] went with her" in order to apply. The applicant adds that [REDACTED] is her "witness that Immigration denied [her] application" because she went to Mexico in 1987. The record of proceeding contains a declaration from [REDACTED]. However, [REDACTED] does not mention this event in her statement. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). As noted above, to meet her burden of proof, the applicant must provide evidence of eligibility apart from her own testimony. In this case, her assertions regarding her entry are not supported by any credible evidence in the record.

The director denied the application for temporary residence on June 3, 2006. In denying the application, the director found that the applicant failed to establish that she entered the United States prior to January 1, 1982 or that she met the necessary residency or continuous physical presence requirements. Thus, the director determined that the applicant had failed to meet her burden of proof by a preponderance of the evidence.

On appeal, the applicant submitted an affidavit and six declarations which provide minimal probative value in supporting the applicant's claims that she entered the United States in 1979 and resided in the United States for the entire requisite period. Also, as noted above, there are several inconsistencies between the applicant's statement, the Form I-687, the affidavit, and the six declarations submitted. The applicant does not address these inconsistencies in her brief on appeal. 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, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice.* *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In this case, the absence of sufficient credible and probative documentation to corroborate the applicant's claim of continuous residence for the requisite period seriously detracts from the credibility of her 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 lack of credible supporting documentation, it is concluded that the applicant has failed to establish by a preponderance of the evidence that she has continuously resided in an unlawful status in the United States for the requisite period, 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.