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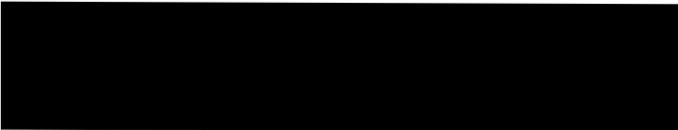
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U.S. Department of Homeland Security
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Washington, DC 20529-2090
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**U.S. Citizenship
and Immigration
Services**

41



FILE:

MSC-06-101-28854

Office: LOS ANGELES

Date:

NOV 10 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. 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.

A handwritten signature in black ink, appearing to read "R. P. 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 director of the Los Angeles office. 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. The director noted that she had been unable to contact one of the individuals who had provided a declaration for the applicant.

It is noted that the director raised the issue of class membership in the decision. Since the application was considered on the merits, the director is found not to have denied the applicant's claim of class membership.

On appeal, the applicant asserts that she has been living continuously in the United States since on or about September 1981. The applicant attempts to explain the absence of contemporaneous evidence of her residence in the United States during the requisite period. The applicant states that the director failed to attempt to contact her affiant prior to denying the application. The applicant also responds to the concerns raised by the director in relation to the applicant's class membership claim.

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. 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 Supplement to Citizenship and Immigration Services (CIS) on January 9, 2006. 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 listed the following address during the requisite period: [REDACTED], Los Angeles, California from September 1981 to December 1990. At part #33 where applicants were asked to list all employment in the United States since entry, the applicant listed the following positions: Part-time live-in housekeeper for [REDACTED] at the [REDACTED]

address from September 1981 to December 1990; and part-time cleaner for [REDACTED] at [REDACTED] Los Angeles, California from September 1981 to December 1990.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided voluminous documentation. Most of these documents do not relate to the applicant's residence in the United States during the requisite period. The applicant provided multiple attestations from [REDACTED] and from the applicant's husband, [REDACTED]. She also provided documents relating to her husband's claim to have resided in the United States during the requisite period. The latter documents are not directly relevant to the question of whether the applicant resided in the United States during the requisite period.

The applicant provided a declaration from her husband, [REDACTED], dated April 24, 2006. This declaration states that the declarant is aware that the applicant lived continuously and unlawfully in the United States since September 1981. The declarant stated that he has known the applicant in the United States since her arrival in September 1981, and he has been continuously living in the United States since October 1980. The declarant described meeting the applicant in September 1981 at a party. The declarant listed the addresses where the applicant resided in the United States, in a manner that is consistent with the information the applicant provided on her Form I-687. The declarant also listed the applicant's employment positions that she listed on her Form I-687. However, the declarant also indicated that the applicant was a part-time housekeeper at his residence at [REDACTED], in addition to working for him at his residence at the [REDACTED] address. This information is not provided on the applicant's Form I-687. This inconsistency casts some doubt on the declarant's ability to confirm the applicant's residence in the United States during the requisite period. This declaration lacks detail regarding the nature and frequency of the declarant's contact with the applicant during the requisite period. Considering that the declarant is the applicant's husband, and considering the minor inconsistency and lack of detail in the declaration, the declaration will be given only limited weight toward establishing that the applicant resided in the United States during the requisite period.

The declaration from [REDACTED] dated March 18, 2007 confirms the applicant's physical presence in the United States from January 1, 1982 to May 4, 1988. The declarant stated that he met the applicant at [REDACTED]'s house in September 1981. The declaration also indicates that the applicant cleaned the declarant's apartment three times per week and did some light cooking, from September 1981 to December 1990. The declarant stated that the applicant worked for him when he was living in two different residences in Glendale, California. Again, this information is inconsistent with the Form I-687, where the applicant only indicated that she was doing cleaning work at one address other than the address where she resided during the requisite period. Despite this inconsistency, the declaration constitutes some evidence that the applicant resided in the United States during the requisite period.

The declaration from [REDACTED] dated April 24, 2006 states that the declarant is aware that the applicant has lived continuously and unlawfully in the United States from September 1981 to present. The declarant stated that she met the applicant in her own house in September 1981 when

the applicant had just crossed the border at Tijuana/San Isidro. The declarant's house at the time was at the [REDACTED] address. In September 1981 the declarant offered the applicant room and board in exchange for housekeeping. The declarant also recalled that the applicant met her husband, [REDACTED] at a party at the declarant's house in September 1981. The declarant also recalled that the applicant obtained a housekeeping job with [REDACTED]. This declaration also refers to the applicant's having worked for [REDACTED] at the [REDACTED] address that is not listed on the Form I-687 application. Despite this minor inconsistency, this declaration also constitutes some evidence that the applicant resided in the United States during the requisite period.

The declaration from [REDACTED] dated March 16, 2007 states that the declarant is concerned that the director indicated that she was unable to contact the declarant by phone. The declarant stated that she never received a telephone call from the director, nor did she get a message on her answering machine. In addition, the declarant indicated that she had provided a mailing address in her first attestation, and she wondered why the director had not attempted to contact her by mail. The declarant also indicated that she would be available to corroborate the applicant's claims in person. This declaration tends to support the credibility of [REDACTED] prior declaration, despite the director's difficulties in contacting the declarant.

The declarations from [REDACTED] and [REDACTED] do not conform to regulatory standards for letters from employers as stated in 8 C.F.R. § 245a.2(d)(3)(i). Specifically, the declarations do not indicate whether or not the information was taken from official company records, where the records are located, and whether CIS may have access to the records. The declarants' failure to indicate whether they have any records relating to the salaries they paid the applicant detracts somewhat from the evidentiary value of the declarations.

In denying the application the director concluded 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 she had been unable to contact one of the individuals who had provided a declaration for the applicant.

On appeal, the applicant asserts that she has been living continuously in the United States since on or about September 1981. The applicant attempts to explain the absence of contemporaneous evidence of her residence in the United States during the requisite period. The applicant states that the director failed to attempt to contact her affiant by phone or mail prior to denying the application. The applicant also responds to the concerns raised by the director in relation to the applicant's class membership claim.

In summary, the applicant has submitted attestations from only two people concerning the requisite period, and one of these individuals is the applicant's husband. Attestations from both declarants conflict with the applicant's Form I-687 in that the applicant fails to list her husband's first address at [REDACTED]. The absence of sufficient, detailed supporting 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 contradictions between the applicant's Form I-687 and the documents she submitted, and given her reliance upon documents with minimal probative value from only two individuals, 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.