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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, D.C. 20529-2090

U.S. Citizenship
and Immigration
Services

[redacted]

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FILE: [redacted] Office: LOS ANGELES Date: AUG 19 2009

MSC 05 295 12670

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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter 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.

John F. Grissom
Acting 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, Los Angeles, California, and 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 requests that her application be reconsidered and provided copies of documents that were previously submitted in support of her appeal.

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 presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the alien attempted to file a completed Form I-687 application and fee or was caused not to timely file, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. Paragraph 11, page 6 of the CSS Settlement Agreement and paragraph 11, page 10 of the Newman Settlement Agreement.

An alien applying for adjustment of status 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. *See* 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 including affidavits 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 the time the applicant filed her Form I-687 application, she provided no documentation to establish continuous residence and physical presence in the United States during the requisite period. In response to a Notice of Intent to Deny dated November 17, 2005, counsel, in an attempt to establish the applicant's continuous unlawful residence since prior to January 1, 1982 through the date she attempted to file her application, indicated the applicant had entered the United States prior to January 1, 1982 with her parents, and except for brief absences, she has continuously resided in the United States. Counsel submitted:

- Affidavits of residence from [redacted] and [redacted] who indicated that they first met the applicant in Los Angeles in 1981. [redacted] indicated that prior to her brother marrying the applicant's sister, "we got together to go out," and since that time she and the applicant has attended family reunions and other events. [redacted] indicated that he married the applicant's sister and in 1984, they went to Disneyland to celebrate the applicant's birthday.
- An affidavit from [redacted], who indicated that she first met the applicant in 1980 in Calexico, California. The affiant indicated that she and the applicant communicate via the telephone, occasionally get together for family reunions and the applicant attended her husband's birthday celebration in 1984.
- An affidavit from [redacted]. who indicated that he first met the applicant through family friends in 1981 in Calexico, California. The affiant indicated that he and the applicant frequently communicate and attend reunions and other events.

- Affidavits from [redacted] and [redacted], who indicated that they first met the applicant through their nephew in 1987 in Calexico, California. The affiant indicated they get together with the applicant at family reunions and special events. [redacted] indicated that the applicant attended the wedding of his niece in Yuma, Arizona. [redacted] indicated that the applicant "would come over with my nephew once in a while to visit."
- Affidavits from [redacted] and [redacted] who indicated that they met the applicant in 1987 in Calexico, California. [redacted] indicated that she met the applicant through her parents and that the applicant's spouse is part of her family. [redacted] indicated he met the applicant through his wife and she became a friend of the family. The affiants indicated that they have frequent communication via the telephone and get together at family reunions.
- Incomplete affidavits from her brother, [redacted] and [redacted]

At the time of her interview on October 23, 2006, the applicant presented:

- A statement dated September 21, 2006, from [redacted], who indicated that she rented a room to the applicant's father and her family from 1980 to 1981 at [redacted] Maywood, California.
- A statement dated October 22, 2006, from an aunt, [redacted], who indicated from 1983 to 1990 the applicant resided with her at [redacted] Huntington Park, California. The affiant indicated that the applicant's father asked if the applicant "could stay and live with me at the time because she wanted to go to school, I agreed to that. The problem was that schools were to far to her and I didn't drive, so I asked her if she could take care of my daughter instead and house hold...."
- A social security printout dated August 7, 2006 of her father's earnings since 1962, her father's wage and tax statements for 1981,1985 and 1987 and uncertified Forms 1040A and 540 A for 1987 through 1989.

In response to a Form I-72 issued on February 21, 2007, the applicant submitted additional affidavits from [redacted] and [redacted] who reasserted the veracity of their initial affidavits. [redacted] submitted photocopies of pictures of his wedding. The applicant also submitted an affidavit from a cousin, [redacted], who indicated from 1982 through 1990, the applicant resided with her at [redacted] Huntington Park, California and that on June 13, 1987, the applicant attended her 15th birthday. [redacted] provided a copy of her invitation and photographs of the event. The applicant also submitted photographs she claimed were taken in July 1985 at Knott's Berry Farm during the statutory period.

The director, in denying the application on June 29, 2007, noted that: 1) the address attested to by [redacted] and [redacted] was not claimed by the applicant on her Form I-687 application; 2) the affidavit from [redacted] indicated that it was subscribed and sworn to on June 13, 2007 by the notary public; however, the affidavit was received at the Los Angeles Office on March 20, 2007;

and 3) the Form I-687 application only listed one address and one employment where the applicant's father resided and was employed during the requisite period and there was no indication where the applicant resided during the period in question. The director determined that the affidavits submitted did not contain sufficient objective evidence to which they could be compared to determine whether the attestations were credible, plausible, or internally consistent with the record.

On appeal, the applicant asserts, in pertinent part:

> In Regards to my aunt [redacted], Yes I am aware that my Application I-687 wasn't filled out properly. That I didn't include the address where I was living at the time (1982-1990). My entire application wasn't filled out right reason, to that was I did it my self and with the little English that I understood I did my best I sending copies of photos where I was at during the time.
>
> Same goes for [redacted] at the time she was 8 yrs. old which I was her baby sitter didn't include address but included pictures and letter. She is now 34 yrs. and remembers clearly when I was there.
>
> The Affidavit from [redacted] was put in a date that didn't match, I went to go talk to the notary public where she stated that she made a mistake and corrected.

The applicant submits an affidavit from the notary public regarding [redacted] affidavit. The affiant indicated that she made a mistake regarding the date the affidavit was sworn to as [redacted] appeared before her on March 13, 2007 not June 13, 2007.

The statements issued by the applicant have been considered. However, the AAO finds that the applicant's explanation lacks credibility. The applicant, in affixing her signature, on the Form I-687 certified that the information she provided was *true* and *correct.* Her failure to list her residence and absence during the requisite period on the Form I-687 application detracts from the credibility of her claim.

The photographs from [redacted] and [redacted] serve only to establish that the applicant was in the United States on a specific date; they do not serve to establish *continuous* residence in the United States during the requisite period. Furthermore, the photographs the applicant claimed were taken at Knotts Berry Farm have no identifying evidence that could be extracted which would serve to prove that the photographs were taken in 1985.

[redacted] and [redacted] claimed to have met the applicant prior to 1982 in the United States, but no attestations to the applicant actual residence in the United States were indicated. The affiants' statements do not provide detailed accounts of an ongoing association establishing a relationship under which the affiants could be reasonably expected to have personal knowledge of the applicant's residence, activities and whereabouts during the requisite period. Furthermore, there is a significant distance (220 miles) between [redacted]

(where the affiants claimed to have met the applicant) and [redacted] (where the applicant purportedly resided in 1980 and 1981, and [redacted] (where the applicant purportedly resided from 1983 to 1988). As previously noted, the applicant did not claim any residence on her application.

The father's Forms 1040A and 540A cannot serve to establish the applicant's presence in the United States in 1987 and 1988 as they were not certified as being filed and they were signed in 1991. In his affidavit, the father only attested to the applicant's arrival in the United States prior to January 1, 1982. The affidavit has little evidentiary weight inasmuch as it does not provide any details regarding the basis for the father's continuing awareness of the applicant's residence in the United States.

Assuming, arguendo, the Forms 1040A and 540A were certified as being filed, they would discredit the affidavits presented by [redacted] and [redacted] as the father indicated the applicant resided with him for 12 months in 1987 and 1988.

The affidavits from the applicant's aunt and cousin must be viewed as having self-evident interests in the outcome of proceedings, rather than as independent, objective and disinterested third parties

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an applicant 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 (BIA 1988).

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 his 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, it is concluded that the evidence submitted fails to establish continuous residence in an unlawful status in the United States during the requisite period.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he 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.