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

U.S. Citizenship and Immigration Services

L1

[redacted]

FILE: [redacted] Office: LOS ANGELES Date: DEC 0 8 2009

MSC 04 311 11160

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. 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.

Perry Rhew
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 director determined that the applicant had not demonstrated that she had continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that she attempted to file a Form I-687, Application for Status as a Temporary Resident, with the Immigration and Naturalization Service or the Service (now United States Citizenship and Immigration Services or USCIS) in the original legalization application period between May 5, 1987 to May 4, 1988. This determination was based upon the applicant's admission that she was out of the United States from August 1984 to 1985 in testimony she provided both at her interview on August 16, 2006 and in a signed sworn statement that she executed on that same date. Therefore, the director concluded that the applicant was not eligible to adjust to temporary resident status pursuant to section 245A of the Immigration and Nationality Act (Act) and the terms of the CSS/Newman Settlement Agreements and denied the application.[1]

On appeal, the applicant reiterates her claim of residence in this country for the required period and asserts that she submitted sufficient evidence in support of such claim. The applicant provides copies of previously submitted documentation in support of the appeal.

An applicant for temporary residence 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) and 8 C.F.R. § 245a.2(b).

An alien applying for adjustment to temporary resident status must 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 and 8 C.F.R. § 245a.2(b)(1).

---

[1] The record shows that applicant included a Form I-690, Application for Waiver of Grounds of Excludability (now referred to as Inadmissibility) when she filed her Form I-687 application. The director also denied the Form I-690 waiver application on August 31, 2006, the same date the director denied the applicant's Form I-687 application. Although the applicant attempted to submit a separate appeal relating to the denied Form I-690 waiver application, such appeal was not accepted as the applicant did not include the required fee. Consequently, there is no appeal of the denied Form I-690 waiver application before the AAO. Nevertheless, it must be noted that the filing of the Form I-690 waiver application was unnecessary as the record contains no finding that the applicant is inadmissible under section 212(a) of the Act.

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. *See* Paragraph 11, page 6 of the CSS Settlement Agreement and paragraph 11, page 10 of the Newman Settlement Agreement.

"Continuous unlawful residence" is defined at 8 C.F.R. § 245a.2(h)(1), as follows:

> An applicant for *temporary resident status* shall be regarded as having resided continuously in the United States if no single absence from the United States if, at the time of filing of the application: no absence 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 for temporary resident status was filed, unless the alien can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed.

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 issue in this proceeding is whether the applicant has submitted sufficient credible evidence to establish continuous residence in the United States for 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 a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on June 1, 2005.

The record further shows that the applicant previously made a claim to class membership in a legalization class-action lawsuit and as such, was permitted to file a separate Form I-687 application on or about August 23, 1988.

At those parts of the two Form I-687 applications where applicants were asked to list other names used or known by, the applicant listed [redacted] In addition at those parts of both of the Form I-687 applications where applicants were asked to list all absences from the United States back through January 1, 1982, the applicant listed absences from this country when she traveled to Mexico to see family from June 1985 to July 1985, traveled to Guatemala to see family from August 1986 to September 1986, and traveled to Honduras to see family from January 1988 to February 1988.

In cases where an applicant claims to have met any of the eligibility criteria under an assumed name, the applicant has the burden of proving that he or she was in fact the person who used that name. 8 C.F.R. § 245.2(d)(2)(i).

The most persuasive evidence of common identity is a document issued in the assumed name which identifies the applicant by photograph, fingerprint or detailed physical description. Other evidence which will be considered are affidavit(s) by a person or persons other than the applicant, made under oath, which identify the affiant by name and address and state the affiant's relationship to the applicant and the basis of the affiant's knowledge of the applicant's use of the assumed name. Affidavits accompanied by a photograph which has been identified by the affiant as the individual known to the affiant under the assumed name in question will carry greater weight. Other documents showing the assumed name may serve to establish the common identity when substantiated by corroborating detail. 8 C.F.R. § 245.2(d)(2)(ii).

The record shows that the applicant submitted a Honduran Birth Certificate bearing her photograph that listed her name as [redacted] The applicant also provided an affidavit signed by [redacted] who acknowledged that she allowed the applicant to use her personal name to work because the applicant did not possess any identification. Documentation such as the Honduran Birth Certificate submitted by the applicant is considered

to be the most persuasive evidence of common identity pursuant to 8 C.F.R. § 245.2(d)(2)(ii). Consequently, it must be concluded that the applicant's has met her burden of proof in demonstrating that she used the name [redacted]

In support of her claim of continuous residence in this country since prior to January 1, 1982, the applicant submitted school transcripts, a student grade report, certificates of achievement, a diploma, a registration card from West Los Angeles College, a reference slip from the California Department of Public Social Services, a letter from the City of Los Angles, California, letters from Bank of America, immunization records, an insurance identification card, a membership card from a video store, tax documents, receipts, photographs, postmarked envelopes, and a Social Security Earnings Statement.

Although the documentation cited above would normally suffice to establish that the applicant resided in the United States for the required period, the record shows that the applicant herself subsequently made an admission that raises serious doubts relating to her claim of residence. The applicant was interviewed at the Los Angeles, California office of USCIS on August 15, 2006. The notes of the interviewing officer reflect that the applicant testified under oath that she departed the United States in August 1984 and returned to this country in September 1985. The record contains a signed sworn statement dated August 15, 2006, written by the applicant in her own hand and in her native language of Spanish that states in pertinent part:

[redacted]

The English translation of the applicant's signed sworn statement is:

> I entered the United States for the first time in September 1980 by crossing the border at San Ysidro, California. I went out for the first time in August 1984 and returned in 1985 and the second time I do not remember, the third time was on January 15, 1988 and I returned on February 12, 1988.

The applicant's testimony both at her interview on August 15, 2006 and within her own sworn statement directly contradicted her prior testimony at those parts of the Form I-687 applications contained in the record regarding the number and length of her absences from this country in the requisite period. Furthermore, the applicant's admission that she was out of the United States for a minimum of four months (August 1984 to an unspecified date in 1985 in her sworn statement) up to a maximum of thirteen months (August 1984 to September 1985 in testimony at her interview) establishes that she was absent from this country in excess of the forty-five day limit put forth at 8 C.F.R. § 245a.2(h)(1). Moreover, the applicant's admission that she was out of the United States for an extended period negated her claim that she continuously resided in this country for the entire period in question as required by section 245A(a)(2) of the Act and 8 C.F.R. § 245a.2(b).

The director determined that the applicant failed to submit sufficient evidence demonstrating her residence in the United States in an unlawful status for the requisite period. The director further determined that the applicant herself had provided contradictory and conflicting testimony at her interview and in her sworn statement relating to critical elements of her claim of continuous unlawful residence in this country since prior to January 1, 1982. Therefore, the director concluded that the applicant was ineligible to adjust to permanent residence and denied the Form I-687 application on August 31, 2006. While the director found that the applicant indicated that she first entered the United States in 1992 and May 29, 1994 in testimony relating the filing of a separate Form I-589, Request for Asylum, it appears that the director based this finding on information contained in the electronic record relating not to the applicant's first claimed entry in to this country but subsequent entries into the United States.

On appeal, the applicant reiterates her claim of residence in this country for the required period and asserts that she submitted sufficient evidence to support such claim. However, the applicant specifically and unequivocally admitted that she had not resided in the United States for a period of at least four months. The applicant's own conflicting testimony relating to critical elements of her claim of residence since prior to January 1, 1982 diminishes her overall credibility as well as the credibility of her claim of continuous unlawful residence in this country for the entire requisite period.

The applicant's contradictory testimony seriously undermines the credibility of her claim of residence in this country for the requisite period. Pursuant to 8 C.F.R. § 245a.2(d)(3), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. The applicant herself has failed to provide sufficient credible testimony to meet her burden of proof in establishing that she has resided in the United States since prior to January 1, 1982 by a preponderance of the evidence as required under both 8 C.F.R. § 245a.2(d)(3) and *Matter of E- M-*, 20 I&N Dec. 77 (Comm. 1989).

Given the applicant's own contradictory testimony, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through May 4, 1988 as required under section 245A the Act. 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.