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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

MSC 06 097 15366

Office: LOS ANGELES

Date:

JAN 26 2009

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.

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. 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. At the conclusion of the interview, the applicant was issued a request for evidence (RFE) asking for a statement from the Social Security Administration listing the years the applicant worked, copies of the applicant's children's birth certificates and further proof of residence for the years 1982 through 1988. In response to the RFE, the applicant submitted copies of her children's birth certificates, several affidavits and other documentary evidence to establish her continuous residence in the United States for the requisite period. The director denied the application, finding that the applicant had not provided credible evidence to establish that she had entered the United States prior to January 1, 1982, and thereafter continuously resided in the United States in an unlawful status for the duration of the requisite period.

On appeal, counsel states that the applicant established by a preponderance of evidence that she resided in the United States for the requisite periods.

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 245(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 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony, and the

sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

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 submitted sufficient credible evidence to meet her burden of establishing that she (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. Here, the applicant has failed to meet this burden.

On November 2, 2006, the applicant was interviewed in connection with his Form I-687 application. The applicant stated that she first entered the United States illegally in July 1980.

In an attempt to establish entry into the United States before January 1, 1982, and continuous unlawful residence in the United States for the requisite period, the applicant provided several affidavits, a declaration stating that she worked under an assumed name, a copy of her 2002-2004 tax returns and her 2003-2004 W-2 Wage and Tax Statement. The AAO will consider all of the evidence relevant to the requisite period.

The regulation at 8 C.F.R. § 245a.2(d) states in pertinent part that:

(2) *Assumed names* - (i) *General*. 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 the applicant was in fact the person who used that nameThe assumed name must appear in the documentation provided by the applicant to establish eligibility. To meet the requirements of this paragraph documentation must be submitted to prove the common identity, i.e., that the assumed name was in fact used by the applicant.

(ii) *Proof of common identity*. The most persuasive evidence 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, 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 affiant under the assumed name in question will carry greater weight.

In the applicant's declaration dated December 26, 2005, she states that when she worked for Western Controls at [REDACTED] in Garden Grove from 1980 to 1982, she used the name [REDACTED]. The applicant states that she only used the name [REDACTED] to work and for that reason only. The record contains a copy of a photo identification card dated November 14, 1980 bearing the name of the company, TSE Sales Corp, as well as the printed name and signature of [REDACTED] Carrillo on the card. The photo identification card also bears the name "[REDACTED]" at the top right hand corner. The record also contains copies of [REDACTED]'s pay stubs from the Western Control Equipment Company dba Western Controls & Ultratherm for the periods ending December 28, 1980 and January 25th, March 8th and April 12th of 1981. The applicant has not stated in her declaration the relevance behind the submission of the photo identification card. The applicant has not established that she ever worked for TSE Sales Corporation and stated only that she used the name [REDACTED] when she worked for Western Controls. The record contains no evidence such as a document issued in the assumed name that identifies the applicant by photo, fingerprint or detailed physical description as an employee of TSE Sales Corporation or Western Controls under the assumed name of [REDACTED]. The applicant has not established that the pay stubs submitted in the assumed name was in fact the pay that she received while an employee of Western Controls & Ultratherm. Therefore, the evidence submitted under the assumed name [REDACTED] will be given no weight in this proceeding.

None of the affidavits submitted attest to the applicant's use of the assumed name, [REDACTED]. The affidavits do not supply enough detail to lend credibility to relationships lasting 28 years. For instance, the affidavits do not include sufficient detailed information about the claimed relationship and the applicant's continuous residency in the United States since 1980. The affidavit from [REDACTED] fails to explain how the affiant and the applicant developed and maintained a

friendship. The affiants, [REDACTED] and [REDACTED] who identify themselves as the applicant's cousin and aunt, respectively, fail to specify the frequency of the social gatherings and family reunions and the type of special occasion or social event where they saw and communicated with the applicant during the requisite period. The affiants also fail to indicate any other details that would lend credence to their claimed acquaintance with the applicant and the applicant's residence in the United States during the requisite period.

None of the affidavits provide concrete information, specific to the applicant and generated by the asserted associations with her, which would reflect and corroborate the extent of those associations and demonstrate that they were a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the affidavits. To be considered probative and credible, witness affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Upon review, the AAO finds that, individually and together, the affiant's affidavits do not contain sufficient detail to establish the reliability of their assertions. Therefore, they have minimal probative value in supporting the applicant's claim that she resided in the United States for the entire requisite period.

In the instant case, the applicant has failed to submit sufficient evidence to overcome the director's denial. The lack of detail in the affidavits calls into question the credibility of the applicant's claim of continuous unlawful residence in the United States throughout the requisite period. The affiant's affidavits while providing some evidence of the applicant's presence in the United States are insufficient to establish the applicant's continuous residence in the United States in an unlawful status since such date and through the requisite period.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that she entered the United States before January 1, 1982 and 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.