U.S. Department of Homeland Security
Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: LOS ANGELES Date: JUL 02 2009

MSC 05 204 10580

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.

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. The director denied the application, finding that the applicant had not provided credible evidence to establish that she had continuously resided in the United States in an unlawful status for the duration of the requisite period.

On appeal, the applicant states that she is eligible for legalization under the settlement agreements. The applicant also states that the current and former components of United States Citizenship and Immigration Services (USCIS) are in defiance with the court order and did not act with unanimity.

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-, supra.* 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. The documentation that the applicant submits in support of her claim to have arrived in the United States before January 1, 1982 and lived in an unlawful status during the requisite period consists of affidavits of relationship written by friends and other evidence. The AAO will consider all of the evidence relevant to the requisite period to determine the applicant's eligibility.

The following inconsistencies are noted:

In a sworn statement, the applicant stated she first entered the United States on December 20, 1979. The applicant indicated she first entered the United States on March 11, 1981 on her Form I-690, and on her class membership determination form.

On her Form I-589 application, the applicant indicated she initially entered the United States on February 14, 1991.

The applicant claimed she first entered the United States on February 14, 1988 on her Form EOIR-40, Application for Suspension of Deportation.

On her Form I-687, the applicant stated she resided in California from March 1987 to November 1988.

On her Form G-325A, the applicant indicated she resided in Guatemala from 1961 [sic] to 1988. On Form G-325A dated August 17, 1992, the applicant said she resided in Guatemala from 1969 to February 1988.

The inconsistencies regarding the dates the applicant initially entered and resided in the United States are material to the applicant's claim in that they have a direct bearing on the applicant's residence in the United States during the requisite period. No evidence of record resolves these inconsistencies. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *See Matter of Ho,* 19 I&N Dec. 582, 591-92 (BIA 1988).

The applicant also submits a letter from [redacted]. Ms. [redacted] states that the applicant worked for her for three years, from April 1988 to March 1991 as a babysitter. Besides attesting to the applicant's good moral character, gives no other information concerning the applicant.

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and, identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

Further, the applicant claims on her Form I-687 application that she was employed by El Torito Restaurants, Long Beach, California, as a cook from April 1981 to December 1988, Overhill Farms, Los Angeles, California, doing general labor from December 1988 to January 1990 and self-employed doing housekeeping from January 1990 to April 1992. As the letter does not meet the requirements stipulated in the aforementioned regulation and contradicts the information given on the applicant's Form I-687 application and other evidence of record, it will be given no weight.

states in his affidavit that he has personally known and been acquainted with the applicant in the United States and has personal knowledge the applicant resided in the United States and worked with him packing carrots at [redacted] located in Perris, California, from February 1975 to September 1975, March 1976 to September 1976 and March 1977 to September 1977. The applicant never claimed to be residing in the United States during this time period on any of the applications and other evidence contained in the record of proceeding.

Upon review, the AAO finds that the letter and affidavit do not contain sufficient detail to establish the reliability of their assertions. The applicant on appeal did not submit evidence to refute any of the director's concerns regarding the lack of evidence provided to prove her entry prior to January 1, 1982 and her continuous residency in an unlawful status throughout the requisite period. The letter and affidavit are insufficient to establish the applicant's 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 requisite period.

The applicant's remaining evidence consists of one receipt and three letters addressed to the applicant from various business vendors. However, this evidence does not establish the applicant's continuous residence throughout the requisite period.

The application cannot be approved for another reason. The evidence of record shows that the applicant disrupted her period of continuous residence in the United States during the statutory period of January 1, 1982 to May 4, 1988, and has not revealed the emergent reasons for her length of absence. Further, the evidence of record shows that the applicant has not been continuously physically present in the United States since November 6, 1986.

An applicant shall be regarded as having resided continuously in the United States if, at the time of filing the application for temporary resident status, no single absence from the United States has exceeded 45 days, and the aggregate of all absences has not exceeded 180 days between January 1, 1982, through the date the application is filed, unless the alien can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the alien was maintaining residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.1(c)(1)(i). The applicant must also establish that he or she has been continuously physically present in the United States since November 6, 1986. 8 C.F.R. § 245a.2(l)(1).

The applicant states in her sworn statement that she left the United States on December 18, 1985 for Guatemala and returned illegally to the United States on December 30, 1986 through San Ysidro. Therefore, the applicant was outside of the United States for over one year. Further, the applicant was not physically present in the United States from November 6, 1986 to December 30, 1986. The AAO notes that the information given by the applicant on her Form G-325 contradicts the information given by the applicant in her sworn statement. Further, the information on the applicant's G-325 makes the applicant's statement regarding her absence from the United States for over one year irrelevant as she was not in the United States until February 1988. Nevertheless, if the applicant was absent for over one year from the United States, it constitutes a break in the applicant's continuous residence and physical presence in the United States.

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*. Further, the applicant disrupted her period of continuous residence in the United States during the statutory period of January 1, 1982 to May 4, 1988, and has not revealed the emergent reasons for her length of absence. The applicant also failed to establish that she has been continuously physically present in the United States since November 6, 1986. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act.

Please note that the applicant was ordered deported to Guatemala on March 31, 1997.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.