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20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED]
MSC 05 271 10949

Office: LOS ANGELES

Date: JUL 30 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 on appeal. The appeal will be dismissed.

The director denied the application because the applicant did not establish that she continuously resided in the United States for the duration of the requisite period.

The body of the applicant's Form I-694, Notice of Appeal of Decision Under Section 210 or 245A, reads, in its entirety:

The decision was made in error because [REDACTED] was able to prove by a preponderance of the evidence that she has met the requirements for temporary residency pursuant to the CSS/Newman Settlement Agreements.

In her brief, counsel states the evidence included declarations, a registered mail receipt, a Form W-2 and other proof for the requisite period. Counsel provides a statistical analysis and indicates the interests of justice are not met when only a tiny percentage of cases are being approved.

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 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).

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 request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, to deny the application.

The pertinent evidence in the record is described below.

1. A State of California identification card issued to a person named [REDACTED] on September 11, 1981.
2. A rental agreement dated January 7, 1981 showing [REDACTED] and [REDACTED] leased a unit in Bell Garden, California, on a month-to-month basis.
3. An employment verification letter from [REDACTED] from the personnel department of Three Star Smoked Fish Company in Los Angeles, California, who states that “[REDACTED] [REDACTED]” was employed by the firm from August 18, 1980 to January 10, 1986.
4. Two Internal Revenue Service (IRS) Form W-2, Wage and Tax Statements, for 1987 showing “[REDACTED]” was employed by “[REDACTED]” and Packman Packaging Inc. in Rancho Cucamonga, California.
5. Two letters to “[REDACTED]” from Frances Tax Service in Bell Gardens, California, enclosing “[REDACTED]” 1987 and 1988 IRS Form 1040, U.S. Individual Income Tax Returns, with instructions that she sign and mail them to the IRS. The 1988 Form 1040 has a Form W-2 attached showing “[REDACTED]” was employed by Cardmatic Industries Inc. in Anaheim, California during that year.
6. A notarized statement from [REDACTED] who states that she knows the applicant, who lived and worked under the name [REDACTED] has resided in the United States since 1982.

7. The applicant's sworn statement before a United States Citizenship and Immigration Services officer signed on July 21, 1992 and reaffirmed and again signed on May 19, 1994 in which she states that she came to the United States for the first time on December 5, 1982.
8. A notarized statement from [REDACTED] who states he knows the applicant resided in the United States since July 1981.
9. An "Affidavit for Proof of Identity" from [REDACTED] who states he knows the applicant has resided in the United States since January 1982.
10. An Affidavit of Witness from [REDACTED] who states that she knows the applicant has resided in the United States since October 1983.
11. An employment verification letter from [REDACTED], of Dart Plastic Container Co., a Tolkan Enterprise, who states the applicant was employed by the firm from April 1, 1986 to April 1, 1987.
12. A U.S. Postal Service Form 3806, Receipt for Registered Mail, showing the applicant sent an article from Bell, California, to a person in Mexico on December 31, 1986.

On her Form I-687, the applicant claims to have used and to have been known under the name [REDACTED]. As proof, the applicant submits her State of California identification card issued on August 23, 1989 and the identification card for [REDACTED] (Item # 1 above). It is determined that the identification cards are for two different persons because the photographs and signatures on the cards do not match. Consequently, the employment and residence documentation submitted by the applicant for [REDACTED] or [REDACTED] (Items #2 through # 5) and the notarized statement from [REDACTED] (Item # 6) are given no credence. The notarized statement from [REDACTED] is not credible (Item #8) because the applicant's signed statement(s) (Item # 7) indicated that she came to the United States for the first time on December 5, 1982. The statements (Items # 9 and # 10) are vague as to how [REDACTED] and [REDACTED] dated the beginning of their acquaintance with the applicant in the United States. Additionally, the employment verification letter (Item # 11) does not provide the applicant's address at the time of employment and identify the location of company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable as is required of employment letters by 8 C.F.R. § 245a.2(d)(3)(i). Based on the applicant's U.S. Postal Service Form 3806 (Item # 12), the AAO accepts that the applicant was present in the United States for a part of the requisite period.

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. Further, the applicant must resolve any inconsistencies in the record with competent, independent, objective evidence. Attempts to explain or reconcile such inconsistencies, absent competent objective evidence sufficient to demonstrate where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec.

582, 591-92 (BIA 1988). These inconsistencies cast doubt not only on the evidence containing the conflicts, but on all of the applicant's evidence and all of her assertions.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate entry into the United States prior to January 1, 1982, and continuous residence during the requisite period.

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*. Therefore, the applicant is ineligible for temporary resident status under section 245A of the Act.

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