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FILE:

MSC-06-077-13393

Office: LOS ANGELES

Date:

MAR 04 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:

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. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed or rejected, 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. 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 (together comprising the I-687 Application). The director denied the application and determined that the applicant had failed to meet her burden of proving that she entered the United States before January 1, 1982 and had resided continuously in the United States in an unlawful status since that date through the date she filed or attempted to file the application for temporary resident status. In denying the application, the director noted that the applicant had not submitted sufficient credible evidence to establish her eligibility for the benefit sought.

On appeal, counsel for the applicant submits a brief entitled “Appeal with a Special Master for Notice of Denial of Class Membership” in which he claims that the director failed to issue a notice of intent to deny (NOID) before denying the application in violation of the applicant’s rights to procedural due process. Counsel further asserts that the evidence submitted is sufficient and credible to support the applicant’s claim that she entered the United States in 1981 and has continuously resided in the United States since that date through the date she filed or attempted to file the application. On appeal, the applicant through her counsel also submits additional evidence to establish that she was physically present in the United States throughout the requisite period.

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).

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).

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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 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, "[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 applicant 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 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.

As indicated above, counsel for the applicant claims on appeal that the director failed to properly follow procedural due process in denying the application for temporary resident status. Counsel states that before denying the application, the director should have issued a NOID to the applicant and given her one last chance to submit additional evidence to show that she meets all of the eligibility requirements for the benefit sought and to rebut the director's reasoning. Counsel labels his appeal to the AAO "Appeal with a Special Master for Notice of Denial of Class Membership."

Paragraph 7 of the CSS/Newman Settlement Agreement, in pertinent part, states: "Before denying an applicant for *class membership*, the applicant . . . shall be sent a notice of intended denial explaining the perceived deficiency in the applicant's class membership application and providing the applicant 30 days to submit additional written evidence or information to remedy the perceived deficiency." (emphasis added). Here, class membership is not an issue since the

director adjudicated the Form I-687 application, thereby treating the applicant as a class member. A review of the director's decision further reveals that the director denied the application because the applicant had failed to meet her burden of proving by a preponderance of the evidence that she resided in the United States continuously during the entire requisite period. For these reasons, no procedural due process has been violated.

The sole issue here is whether the applicant has furnished sufficient credible evidence to establish her continuous unlawful residence in the United States since before January 1, 1982 through the date she filed or attempted to file the application for temporary resident status.

During her interview with a United States Citizenship and Immigration Service (USCIS) officer on November 27, 2006, the applicant stated that she first came to the United States in July 1981. Other than two brief trips outside the United States in 1984 and 1985, the applicant further indicated that she has always resided in the United States. As evidence, the applicant submitted two affidavits from people who have known her since 1981. On appeal, the applicant furnished a letter and a photocopy of a receipt issued to her for the amount of \$525.00 as a rent received from the period between August 1, 1981 and September 1, 1981.

Both [redacted] and [redacted] state in their affidavits that they have known the applicant since 1981. To show that both [redacted] and [redacted] have personal knowledge of the applicant's continuous residence in the United States, they list the cities in California where the applicant has resided since July 1981 and claim that they met the applicant "very often" in the past. [redacted] further notes that he and the applicant were friends while [redacted] claims that he was the applicant's neighbor. In a letter submitted on appeal, [redacted] further states that he used to see the applicant at her uncle's place, weddings, temples and other Indian culture celebrations. Other than those statements, neither [redacted] nor [redacted] describes with sufficient detail that their relationship with the applicant probably did exist in those early days of 1980s and that the affiants, by virtue of that relationship, have knowledge of the facts alleged. For instance, none of the affiants reveals with any specificity the events and circumstances how they first met the applicant, how "often" they used to meet with or talk to the applicant, or where the applicant specifically used to reside in the United States during the requisite period. Their statements such as "I used to see [redacted] (the applicant) at weddings, temples and other Indian celebrations" or "We (the applicant and the affiant) were neighbors and used to meet very often" are too general and not persuasive as evidence that the applicant *did* reside in the United States continuously in an unlawful status for the duration of the requisite period. Because their affidavits are seriously lacking in relevant detail, they lack probative value and have only minimal weight as evidence of the applicant's eligibility for temporary resident status.

A further review of the applicant's record reflects that the applicant resided in New Delhi, India, between March 1992 and March 1998. Both affiants, however, in their affidavits claim that the applicant resided in Santa Monica, California from 1989 to 2001. Although the inconsistencies between the record and the affiants' statements cover the time period outside the requisite time

period, they materially affect the credibility of the affiants and their claims that they have known the applicant since 1981.

Additionally, 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 applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the application. *Id.* at 591. No evidence has been submitted or explanation provided to resolve and reconcile the inconsistencies in the record.

The rent receipt submitted on appeal is neither credible nor probative as evidence that the applicant has resided continuously in the United States since 1981. Other than what the applicant or her counsel claims that it was received as a receipt for the month of August 1981 rent, the receipt by itself reveals no information where the applicant resided in 1981 or whether she continuously resided in the United States throughout the requisite period.

The absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period and lack of detail as well as inconsistencies noted in the record, seriously detract from the credibility of her 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 lack of credible supporting documentation and inconsistencies in the record, it is concluded that the applicant has failed to establish by a preponderance of the evidence that she 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.