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

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U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

FILE: [redacted] Office: NEW YORK Date: MAR 17 2009

MSC-06-007-13220

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 if your case was 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, or *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, New York, and 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 to United States Citizenship and Immigration Services (USCIS). The director denied the application, finding that the applicant had failed to meet her burden of proving by a preponderance of the evidence that she entered the United States before January 1, 1982 and resided continuously in the United States throughout the entire requisite period. Specifically, the director in her decision indicated that because all of the affiants seemed to have no direct personal knowledge of how and when the applicant first entered the United States before January 1, 1982, their sworn statements were not credible as evidence of the applicant's continuous residence in the United States since before January 1, 1982. In denying the application, the director also referred to "progress notes" issued by the applicant's physician and stated that the doctor's notes were not credible since no original documents had been submitted.

On appeal, the applicant submits a brief in which she contends that the affidavits along with other documents that she has previously submitted are credible evidence of her continuous residence in the United States throughout the requisite period. She further asserts that the doctor's progress notes are credible and claims that the director's request for the original copy of the notes is unreasonable.

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).

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, *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 meet the burden of proving by a preponderance of the evidence that she entered the United States before January 1, 1982 and had since that date resided continuously in the United States through the date she filed or attempted to file the application for temporary resident status.

The applicant testified orally and in writing that she was a single woman when she first entered the United States on September 17, 1981 through Canada. She further stated that that she had resided in the United States continuously and unlawfully since September 17, 1981, through May 28, 1987, the date she attempted to file the application for temporary resident status. As evidence of her continuous residence in the United States between September 1981 and May 1987, the applicant submitted four affidavits from [redacted], her husband; [redacted] and [redacted] All of the affiants generally profess to have known the applicant since 1981 and include in their sworn statements addresses at which she resided during the requisite period. They also include in their affidavits their contact information and their willingness to testify for the applicant if needed.

Upon review of these affidavits, the AAO agrees with the director that none of the affiants above has personal and direct knowledge of how and when the applicant first entered the United States in 1981 or how long she stayed in the United States as a single woman. Furthermore, their references to having met the applicant and talked with her in September 1981 when she just arrived in Staten

Island, New York, are too general and not persuasive as evidence of the applicant's presence and residence in the United States since 1981. None of the affiants in their sworn statements describes with sufficient detail the events and circumstances of how they initially met the applicant in 1981, how they date their acquaintance with her, or how often they met or talked with her during the critical period between 1981 and 1988. Because these affidavits are lacking in relevant detail, they lack probative value and have only minimal weight as evidence of the applicant's eligibility for temporary resident status.

As evidence of her continuous residence in the United States since 1981, the applicant also submitted a letter from Our Lady of Good Counsel Parish in which [redacted], the author of the letter, stated that the applicant had been a member of the Our Lady of Good Counsel Church since 1981. [redacted] in his letter further explained the circumstances under which he came to know the applicant and included his telephone number as well as stated his willingness to testify for the applicant if needed. A review of the applicant's record, however, reveals that Our Lady of Good Counsel Church has previously issued two identical statements in connection with her application for family unity benefits under the LIFE Act in which the authors of the letters, [redacted] and [redacted], stated that the applicant has been a member of the parish since August 1987.

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 the inconsistencies between the statements made by [redacted] and by both [redacted] and [redacted]; the attestation from [redacted] is deemed not credible as evidence of the applicant's continuous residence in the United States since 1981.

In an attempt to further show that she has resided continuously in the United States since 1981, the applicant submitted a signed statement from her physician, [redacted], in which her physician stated that the applicant has been his patient since November 28, 1981. As evidence, Dr. [redacted] submitted his "progress notes" on the applicant showing that he treated her annually between November 1981 and November 1989. However, a review of the record reveals that Dr. [redacted] also issued a similar statement to the applicant earlier in connection with her LIFE application in which he stated that the applicant has been a patient of his office since September 1, 1988. Furthermore, upon review, the AAO observes that on the first page of his progress notes beginning in 1981, [redacted] indicates that the applicant is married. This information is in direct conflict with the applicant's testimony in which she stated that she was single when she first entered the United States in 1981.

Further damaging the credibility of the applicant is her claim according to her Form I-687 that she was employed by [redacted] as a housekeeper from 1981 to 1987. A review of the record reveals that [redacted] issued a letter to the applicant's husband as evidence of her husband's employment as a housekeeper from 1981 to 1987. No evidence has been submitted to indicate that

[redacted] also employed the applicant during the same period of time. None of the witnesses, including the applicant's husband, indicates that the applicant and her husband both worked as housekeepers for [redacted] from 1981 to 1987, and that they traveled together to Sri Lanka to marry in 1987.

Considering the evidence individually and within its totality, the applicant's supporting documents are inconsistent with the claims made on the present application or previous applications filed with United States Citizenship and Immigration Service (USCIS) and that multiple inconsistencies exist within the claims made on the supporting documents. Upon a *de novo* review, the AAO, therefore, determines that the evidence in the record does not establish by a preponderance of the evidence that the applicant entered the United States before January 1, 1982 and resided in the United States continuously during 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.