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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

PUBLIC COPY

L1

FILE: [redacted] Office: LOS ANGELES Date: MAR 18 2009

MSC 04 363 10463

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, and a Form I-687 Supplement, CSS/Newman (LULAC) Class Membership Worksheet. 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. In so finding, the director compared the current application with the Form I-687 that she signed on December 28, 1989 and found that they did not contain consistent residence and employment information.

On appeal, the applicant states that she has been in the United States since December 1979. She further states that she left the country in about 1986 and that she has been employed by [redacted]. since she arrived in this country as an apparel salesperson, and that since 1986, she has worked for cash, has not declared her income and lived with her sister.

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) 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, 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.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine the evidence for relevance, probative value, and credibility, within the context of the totality of the evidence, to determine whether the facts to be proven are 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, 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.

The pertinent evidence in the record is described below.

1. A copy of a school record indicating that the applicant was a student in the Los Angeles Unified School District in Los Angeles, California, beginning on September 16, 1980 and ending on June 3, 1981. Her mother is listed as living at [redacted], in Los Angeles, California, in the "information concerning home" portion of the school record.

2. An Affidavit of Witness from [redacted] who states that the applicant lived at her house at [redacted] in Los Angeles, California.

3. A notarized statement from [redacted] who states that he has known the applicant since 1980.

4. An Affidavit of Witness from [redacted] who states that the applicant and his wife cared for his daughter from 1982 to 1988.

5. An Affidavit of Witness from [redacted] who states he has known the applicant since 1983.

6. An Affidavit of Witness from [redacted] who states he has known the applicant since 1984.

7. An Affidavit of Witness from [redacted] who states he has known the applicant since September 29, 1985.

8. An Affidavit of Witness from [redacted] who states that she has known the applicant since 1986.

The AAO accepts that the applicant was present in the United States for a part of the requisite period.

On her Form I-687 that she signed on December 28, 1989 and on the current application, the applicant stated that she resided at [redacted] in Los Angeles, California, from 1979 to 1983. This information disagrees somewhat with the address given for her mother on her school record which stated that she lived at the [redacted] but in Apt. [redacted] (Item # 1 above), and with the statement from [redacted] (Item # 2), who stated that the applicant lived with her at the [redacted], but in Apt. [redacted] Additionally, on her December 28, 1989 Form I-687, the applicant listed no residence in the United States from 1983 to 1987, and on her current application, she listed no residence in this country from 1983 to 1988. The notarized statements and affidavits (Items # 3 thru # 8), when considered with the other evidence of record, do not confirm that the applicant resided in the U.S. for the requisite period.

On her current Form I-687, the appliciant claimed no employment in the United States until 2001 when she started working for [redacted] However, on appeal, the applicant states that she has been employed by [redacted]. since she arrived in this country as an apparel salesperson, **and that since 1986, she has worked for cash.** She did not list [redacted] as a place of employment on either of her applications nor did she explain what date she was referring to as being "since she arrived in this country."

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. The applicant asserted residential history on her I-687, is accompanied by conflicting evidence and she has provided an inconsistent employment history.

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.