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MSC-06-098-27970

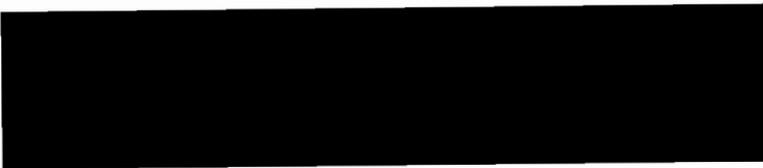
Office: LOS ANGELES

Date: **MAR 18 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. 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.

A handwritten signature in black ink, appearing to read "John F. Grissom".

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 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 Act, and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet. The director denied the application after determining that the applicant had not established by a preponderance of the evidence that she had continuously resided or had been continuously physically present in the United States for the duration of the requisite period. The director noted that the affidavits submitted on behalf of the applicant were boiler plate, fill-in-the-blank affidavits, and that they did not appear to be credible. The director denied the application, finding that the applicant had not met her burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, counsel asserts that the director erred in finding that the applicant's evidence was insufficient to demonstrate her eligibility for the immigration benefit sought, and that the applicant's testimony and the documentation submitted were credible. Counsel requests that the matter be remanded to allow the applicant to explain the additional documentation submitted. The applicant submits evidence on appeal.

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 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) 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. See 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).

An alien shall be regarded as having resided continuously in the United States if at the time of filing an application for temporary resident status, no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (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.15(c)(1).

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-*, 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 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 her burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The applicant submitted the following evidence:

- Affidavits dated December 20, 2005 and April 18, 2007 from _____ in which he stated that he has known the applicant since late 1980, when she first began occasional

cleaning at his house. He stated that the applicant has continued to clean his house to the present. He also stated that the applicant would stay at his house to care for his mother-in-law while he and his wife traveled.

- A letter from [REDACTED] in which he stated that he has known the applicant since April 1980 and that she has worked for many people in various capacities since that time.
- An affidavit from [REDACTED] in which she stated that she met the applicant in late 1980 and that she did occasional work for her parents.
- Affidavits from [REDACTED], and [REDACTED] in which they stated that they have known the applicant since 1981.
- A fill-in-the-blank affidavit from [REDACTED] in which he stated that he met the applicant on July 15, 1981 when she came to visit his family. He further stated that since that time, he and the applicant would visit each other three to four times each year.
- A fill-in-the-blank affidavit from [REDACTED] in which he stated that he met the applicant in February 1981 when he went to visit his friend [REDACTED], and that he and the applicant have seen each other at family gatherings since then.

Here, the affiants fail to demonstrate first-hand knowledge of the applicant's entry into the United States or her whereabouts and the circumstances of her residency throughout the requisite period. The affiants also fail to specify the applicant's place of residence during the requisite period.

The applicant also submitted a fill-in-the-blank affidavit from [REDACTED] and [REDACTED] in which they stated that they have known the applicant since March 1981 when they met through a mutual acquaintance, and that they developed a friendship with the applicant and have since frequented social gatherings together. They also listed the applicant's address as [REDACTED] in Los Angeles, California from March 1981 to 1988. The affiant's statement is inconsistent with the applicant's Form I-687 application at part #30 where she stated that she resided at the above address from February 1980 to February 1988. The applicant has failed to provide an explanation for this inconsistency. 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. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The affiants also fail to specify the name of the mutual friend and the nature of their relationship with the applicant.

The director determined that the applicant had not submitted sufficient evidence to establish her eligibility for temporary resident status.

On appeal, counsel reasserts the applicant's claimed eligibility for temporary resident status. The applicant resubmits statements from _____ and _____. She also submits an affidavit from _____.

Affiant _____ states that she has known the applicant since birth. She further states that she saw the applicant when the applicant first arrived in the United States in February 1980, and that the applicant initially stayed at her house in East Los Angeles. The affiant states that she and the applicant have maintained good family relations through the years. The affiant fails to specify the address where the applicant resided upon first arriving in the United States or the length of her stay at that address. She fails to specify the applicant's place of residence subsequent to her living with the affiant. The affiant also fails to specify the extent to which she saw and communicated with the applicant during the requisite period.

In the instant case, the applicant has failed to provide sufficient, probative evidence to establish her continuous unlawful residence in the United States since prior to January 1, 1982, and throughout the requisite period. She has failed to overcome the basis for the denial. There is insufficient evidence in the record of proceeding to demonstrate the reliability of the affidavits submitted.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, and the inconsistencies in the evidence discussed above seriously detracts from the credibility of this 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 applicant's reliance upon attestations that are inconsistent with her statements and that are lacking in detail, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States for the requisite period 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.