U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: MIAMI Date: MAY 13 2009
MSC-06-083-13368

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. 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, Miami. 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, finding that the evidence submitted was not credible.

The record indicates that the applicant is represented by [redacted] of the Caribbean Social Services (CSS). Neither [redacted] nor CSS is authorized to represent aliens before United States Citizenship and Immigration Service (USCIS) under 8 C.F.R. § 292.1 and thus, neither will receive notice of these proceedings.

On appeal, the applicant contends that she has submitted sufficient credible evidence to establish her eligibility for temporary resident status and further claims that the application should not be denied solely because she only submitted affidavits. Additionally, the applicant states that the director denied the application without giving her the opportunity to be interviewed.

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.

On appeal, the applicant states that the application was denied without the opportunity for an interview. Pursuant to 8 C.F.R. § 245a.2(j), each applicant for temporary resident status shall be interviewed by an immigration officer, except that the interview may be waived for a child under 14, or when it is impractical because of the health or advanced age of the applicant.

A review of the record in this case reveals that the applicant was issued a notice to appear for an interview with an immigration officer on January 10, 2007. The director stated in his notice of intent to deny (NOID) and final decision that the applicant was interviewed on January 10, 2007. In response to the director's NOID and on appeal, the applicant's unauthorized representative states that the director wrongfully denied the application without interviewing the applicant. The applicant does not herself submit a statement indicating that she was not interviewed. The AAO declines to accept the uncorroborated argument of [redacted] who is not authorized to make representations on behalf of the applicant under 8 C.F.R. § 292.1. The AAO finds that the record, as presently constituted, established that the applicant was interviewed on January 10, 2007.

The issue in this proceeding is whether the applicant has provided sufficient documentation to prove by a preponderance of the evidence that he has resided in the United States continuously since before January 1, 1982 and throughout the requisite period.

To prove that she has resided and worked in the United States continuously since before January 1, 1982, the applicant submitted seven affidavits. All of the affiants state that they have known the applicant since 1981. Four of them, [redacted] and [redacted] state that they first met the applicant in November 1981 and that her parents sent her from St. Kitts to live with her [redacted] and attend school in Florida, but that when the applicant arrived in the United States, [redacted] got sick and the applicant had to care for her aunt and could not attend school. None of these affiants gives sufficient detail to the applicant's and her aunt's circumstances from 1981 to 1986 to establish the truth of their assertions. None describes the illness of [redacted] the severity of it, or how a thirteen-year-old girl took care of her aunt full time. None describes with particularity the applicant's interaction with the community until 1986, when she obtained a job outside the home, or describes how [redacted] illness improved to such an extent that the applicant could take a full-time job outside the home.

The affidavits from [redacted] and [redacted] lack probative value as evidence of the applicant's continuous residence since 1981. They both simply list the addresses where the applicant has been living and working since November 1981. Simply listing the address at which the applicant lived during the requisite period without providing any detail about the events and circumstances of the applicant's life in the United States during the requisite period does not establish her continuous residence in the United States throughout the requisite period.

The affidavit from [redacted] states that the applicant worked as a nanny for the [redacted] family from September 1981 to April 1986. However, none of the other affiants including the applicant herself ever mentions her employment with the [redacted] family in the United States. This employment directly contradicts the affidavits of [redacted] and [redacted] who all indicate that they applicant could not go to school in the United States because she had to take care of her aunt from 1981 to 1986. 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. Further, [redacted] fails to include in her affidavit detailed information as prescribed by the regulations at 8 C.F.R. § 245a.2(d)(3)(i) concerning past employment records. Specifically, she fails to provide information about where the applicant resided at the time of employment, where or how she acquired the information about the applicant's employment, and whether USCIS may have access to the records, if any.

While the application should not be denied solely because the applicant has only submitted affidavits, the submission of affidavits alone will not always be sufficient to support the

applicant's claim. The sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. Here, the affidavits submitted, when considered individually and together, do not establish that the applicant resided in the United States continuously since before January 1, 1982 and 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, the noted inconsistencies, and the lack of detail in the record 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 the 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.