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FILE:

MSC-06-082-11936

Office: DALLAS

Date:

OCT 15 2009

IN RE:

Applicant:

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.

Perry Rhew  
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, Dallas. 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. The director determined that the applicant had not established by a preponderance of the evidence that she had continuously resided in the United States in an unlawful status for the duration of the requisite period. The director noted that the affidavits submitted were not credible or verifiable and were lacking in probative value. The director also noted that the applicant failed to respond to the Notice of Intent to Deny (NOID) which requested that the applicant submit additional evidence to substantiate her claimed eligibility for the immigration benefit sought. 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's decision was arbitrary, capricious, and inconsistent with the evidence found in the record. Counsel further asserts that the applicant did respond to the NOID by submitting additional affidavits, and that the attestations submitted on behalf of the applicant are credible and sufficient to establish the applicant's eligibility for temporary resident status.

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) 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).

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.

Although the director stated that the applicant had failed to respond to the NOID, the applicant submitted his FedEx receipts which show that his documentation was received by the Service Center on or about September 27, 2007, which is prior to the decision date. The package contains evidence that the AAO will review on appeal.

The applicant submitted the following attestations as evidence:

- Copies of policies from the American National Insurance Company dated December 1983 and August 1985 and showing the applicant’s name as recipient and her husband as the insured.
- A copy of two postmarked envelopes dated 1984 and May 1985 and bearing the applicant’s name.
- A copy of an account receipt from My Brother’s Plaster bearing the applicant’s name and dated April 19, 1985.

- A copy of the applicant's child's Texas birth certificate which indicates her date of birth as July 15, 1984.
- A copy of a rent receipt dated May 6, 1984 for the premises known as [REDACTED]. This address is not listed on the applicant's Form I-687.
- A copy of the court disposition in the applicant's criminal case which showed that she was arrested and charged with theft on July 22, 1985 in Dallas County, Texas, and that the charge was dismissed by the court in July 1988.

The applicant submitted the following attestations as evidence:

- An affidavit from [REDACTED] who stated that she met the applicant towards the end of 1981 when she came to the affiant's office seeking information on possible travel arrangements. She stated that she and the applicant became friends and would visit each other often. The affiant also stated that in the summer of 1982 she was told by the applicant that she had become pregnant, and that she sold the applicant an airline ticket to go to El Salvador to be with her mother who was ill. She further stated that the applicant was absent from the United States for approximately fifty-five days, and returned with her new born baby. This statement is inconsistent with the applicant's Form I-687 at part #32 where she indicated that she was first absent from the United States in March 1982. It is also noted that on the applicant's previous Form I-687 and on Form I-821, Application for Temporary Protected Status (TPS), she indicated that her first child was born August 16, 1982 in El Salvador.
- An affidavit from [REDACTED] who stated that he is the applicant's husband and that the applicant has been residing continuously in the United States since October 1981. He also stated that he has been financially responsible for the applicant since her arrival in the United States.
- Affidavits from [REDACTED] and [REDACTED] who stated that they have known the applicant since October 1981 and that their families would visit with each other on a regular basis. The statements are inconsistent with the applicant's testimony during her immigration interview where she indicated that she entered the United States in November of 1981.

The affidavits fail to establish the applicant's continuous unlawful residence in the United States throughout the requisite period. The inconsistencies and contradictions found in the record of proceeding cast doubt on the applicant's evidence and proof. 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). Given these deficiencies, these affiants' statements have minimal probative value in supporting the applicant's claims that she entered the United States prior to January 1, 1982, and resided in the United States throughout the requisite period.

None of the affiants' statements provide concrete information, specific to the applicant and generated by the asserted associations with her, which would reflect and corroborate the extent of those associations and demonstrate that they were a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the declarations. To be considered probative and credible, witness declarations must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Upon review, the AAO finds that, individually and collectively, the witness statements do not indicate that their assertions are probably true. Therefore, they have little probative value.

In the instant case, the applicant has failed to provide sufficient credible and probative evidence to establish her continuous unlawful residence in the United States since prior to January 1, 1982, and throughout the requisite period. It appears from the record that the applicant has been present in the United States since December 1983; however, she has failed to overcome the director's basis for denial. Moreover, the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988). Without more persuasive evidence to demonstrate the applicant initial arrival in the United States and her continuous unlawful residence thereafter, her eligibility for temporary residence status cannot be established.

It is noted that the applicant's TPS application was denied on May 14, 2004.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period and the inconsistencies noted above seriously detract 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 inconsistencies found in the record, and the applicant's reliance on evidence with little probative value, 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.