identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

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

U.S. Citizenship and Immigration Services

L1

[redacted]

FILE: [redacted] Office: LOS ANGELES Date: AUG 25 2010

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.

IN BEHALF OF APPLICANT:

[redacted]

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 applicant's temporary resident status was terminated by the Director, Los Angeles, California. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director determined that the applicant had not demonstrated that she had continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that she attempted to file a Form I-687, Application for Status as a Temporary Resident, with the Immigration and Naturalization Service or the Service (now United States Citizenship and Immigration Services or USCIS) in the original legalization application period between May 5, 1987 to May 4, 1988. Therefore, the director concluded that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and section 245A of the Immigration and Nationality Act (Act) and terminated the applicant's temporary residence.

On appeal, counsel reiterates the applicant's claim of residence in this country for the period in question and asserts that the applicant submitted sufficient evidence to demonstrate such claim. Counsel submits documentation in support of the appeal.

The status of an alien lawfully admitted for temporary residence may be terminated at any time if it determined that the alien was ineligible for temporary residence under section 245A of the Act. 8 C.F.R. § 245a.2(u)(1)(i).

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 presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the alien attempted to file a completed Form I-687 application and fee or was caused not to timely file, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. *See* Paragraph 11, page 6 of the CSS Settlement Agreement and paragraph 11, page 10 of the Newman Settlement Agreement.

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 including affidavits is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and, identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

8 C.F.R. § 245a.2(d)(3)(v) states that attestations by churches, unions, or other organizations to the applicant's residence by letter must: identify applicant by name; be signed by an official (whose title is shown); show inclusive dates of membership; state the address where applicant resided during membership period; include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; establish how the author knows the applicant; and, establish the origin of information contained in the attestation.

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.

The applicant submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to USCIS. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the preparer indicated that the applicant lived at "18612 D Demions" in Huntington Beach, California from September 1981 to April 1984, "6751 Bestel Ave" in Westminster, California from April 1984 to November 1988, and "12521 Leroy Ave" in Garden Grove, California from December 1988 to

August 1989. Further, at part #31 of the Form I-687 application, where applicants were asked to list all affiliations and associations with clubs, organizations, churches, unions, businesses, etc., the preparer indicated that the applicant was associated with [redacted] September 1981 to June 1993.

The record shows that the applicant had previously asserted a claim to class membership in one of the legalization class-action lawsuits, and as such was permitted to file a separate Form I-687 application on or about February 12, 1993. At part #33 of the Form I-687 application (the difference in the numbering of parts on the two separate Form I-687 applications is explained by the fact that the application format was revised as of October 26, 2005) where applicants were asked to list all residences in the United States since first entry, the applicant listed [redacted] from September 1981 to April 1984, [redacted] from April 1984 to December 1988, and [redacted] from December 1988 to August 1989. Further, at [redacted] of the Form I-687 application, where applicants were asked to list all affiliations and associations with clubs, organizations, churches, unions, businesses, etc., the applicant failed to list any affiliations or associations.

The fact that the Form I-687 application filed on or about February 12, 1993 and the Form I-687 application filed on December 17, 2004 do not contain corresponding information relating to the applicant's affiliation with [redacted] during the requisite period raises questions relating to the credibility of her claim of continuous residence in the United States since prior to January 1, 1982.

In support of her claim of continuous residence in this country for the required period, the applicant provided an employment affidavit dated February 2, 1993 and a separate undated declaration, both of which are signed by [redacted]. In the affidavit dated February 2, 1993, [redacted] listed her address as [redacted] and stated that she employed the applicant as a babysitter and housekeeper, with room and board, from September 1981 through September 1989, and again from February 1992 through the date the affidavit was executed. However, in the undated declaration, [redacted] declared that she employed the applicant since July of 1991. No explanation was put forth as to why [redacted] provided conflicting testimony regarding the dates she employed the applicant. In addition, [redacted] testimony in her affidavit dated February 2, 1993 that she provided the applicant with room and board from September 1981 to September 1989 does not correspond to the applicant's testimony that she began to reside at [redacted] in December 1988 on the two Form I-687 applications in the record. Furthermore, [redacted] failed to provide relevant information in either the affidavit or declaration relating to the availability of business records reflecting the applicant's employment as required by 8 C.F.R. § 245a.2(d)(3)(i).

The applicant included an affidavit signed by [redacted] who noted that she had personal knowledge the applicant resided in Santa Ana, California from September 15, 1981 to the date

the affidavit was executed January 21, 1993. Nevertheless, a review of both the Form I-687 applications in the record reveals that the applicant has never claimed that she resided in Santa Ana, California either during the period in question or thereafter.

The applicant provided an affidavit dated January 26, 1993 that is signed by [redacted] [redacted]estified that the applicant resided in Orange, California from October 1981 through the date the affidavit was executed. However, [redacted] testimony that the applicant resided in Orange, California during the requisite period directly contradicted the applicant's testimony that she resided at "[redacted] from September 1981 to April 1984, [redacted] from April 1984 to November 1988 on both of the Form I-687 applications in the record.

The applicant submitted an affidavit dated January 26, 1993 that is signed by [redacted] [redacted] stated that the applicant resided in Anaheim, California from November 1981 through the date the affidavit was executed. Regardless, [redacted] attestation that the applicant resided in Anaheim, California for the entire required period does not correspond to the applicant's testimony that she resided in Huntington Beach, California from September 1981 to April 1984 and Westminster, California from April 1984 to November 1988 on the Form I-687 applications contained in the record.

The applicant included a letter June 25, 1993 containing the letterhead of [redacted] [redacted], which is signed by Father [redacted] who listed his position as [redacted]. Father [redacted] provided the applicant's address as of the date the letter was executed and declared that she attended this church on a regular basis since 1981. However, [redacted] failed to provide a complete listing of the applicant's address during her association with [redacted] establish how he knows the applicant, and establish the origin of the information he attested to as required under 8 C.F.R. § 245a.2(d)(3)(v). Moreover, it must be noted that the applicant failed to list any affiliation or association with the [redacted] of the Form I-687 application submitted on or about February 12, 1993 where applicants were asked to list all affiliations or associations with clubs, organizations, churches, unions, business, etc.

The applicant provided two affidavits dated August 5, 2005 and January 3, 2007 that are both signed by [redacted] noted that he first met the applicant at [redacted] and had knowledge that she resided in the United States since December 1981. Nevertheless, the probative value of [redacted] testimony is limited as the applicant failed to list any affiliation or association with the [redacted] of the Form I-687 application submitted on or about February 12, 1993.

The applicant submitted affidavits signed by [redacted]. Although these affiants attested to the applicant's residence in the United States for the requisite period or a portion thereof, their testimony is general and vague and does not

provide any specific and verifiable information to substantiate her claim of continuous residence in this country for the period in question.

The record reflects that the applicant was granted temporary resident status on August 7, 2007.

The director determined that the supporting documents and testimony in the record contained in the record could not be considered as credible because of the discrepancies discussed above relating to critical elements of the applicant claim of residence in the United States up through 1984. As a result, the director found that the applicant failed to establish that she continuously resided in this country in an unlawful status since before January 1, 1982. Therefore, the director concluded that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and section 245A of the Act and terminated the applicant's temporary resident status on December 7, 2009.

On appeal, counsel contends that the discrepancies contained in the evidence and testimony in the record are trivial, and therefore, immaterial and irrelevant to the applicant's claim of residence in this country for the period in question. However, counsel's contention is without merit as the discrepancies and conflicts in the evidence and testimony contained in the record relate to critical elements of the applicant's claim of residence in the United States since prior to January 1, 1982 and are both directly material and relevant to credibility her claim of residence in the United States for this period. The AAO conducts a de novo review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility and making a determination based upon a preponderance of the evidence as required by the regulation at 8 C.F.R. § 245a.2(d)(5) as well as the precedent decision reached in *Matter of E-- M--*, 20 I. & N. Dec. 77 (Comm. 1989).

The AAO maintains plenary power to review this matter on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also*, *Janka v. U.S. Dept. of Transp.*, NTSB, 925 F.2d 1147, 1149 (9th Cir. 1991). The federal courts have long recognized the AAO's *de novo* review authority. *See,* e.g. *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

Counsel asserts that the applicant did not list [redacted] in [redacted] as a residence during the requisite period on either of the Form I-687 applications contained in the record because she maintained a separate residence in which she lived for the two days of the week that she did not work and reside at [redacted]. However, counsel's explanation cannot be considered as reasonable as it would only be logical for the applicant to also include an address where she purportedly resided for five of seven days of the week during that period she was employed by [redacted] from September 1981 to September 1989. Further, it must be noted that the applicant did list [redacted] as her residence but only after December 1988 on both of the Form I-687 applications contained in the record.

Counsel's remarks on appeal regarding the sufficiency of evidence submitted by the applicant to demonstrate her residence in this country during the period in question have been considered. However, the record is absent sufficient supporting documents containing specific and verifiable testimony to substantiate the applicant's residence in this country from prior to January 1, 1982 through the date she attempted to apply for legalization in the original application period from May 5, 1987 to May 4, 1988. In addition, three affiants, [redacted] provided testimony relating to the location of applicant's residence in the requisite period record that directly contradicted her own testimony regarding her addresses of residence for this period on the Form I-687 applications contained in the record. Finally, the Form I-687 application filed on or about on or about February 12, 1993 and the Form I-687 application filed on December 17, 2004, do not contain corresponding information relating to the applicant's affiliation with [redacted] during the requisite period.

The absence of sufficiently detailed supporting documentation and the conflicting nature of the evidence and testimony in the record impair the credibility of the applicant's claim of residence in this country for the period in question. Pursuant to 8 C.F.R. § 245a.2(d)(3), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. The applicant has failed to submit sufficient credible documentation to meet her burden of proof in establishing that she has resided in the United States since prior to January 1, 1982 by a preponderance of the evidence as required under both 8 C.F.R. § 245a.2(d)(3) and *Matter of E- M-*, 20 I&N Dec. 77 (Comm. 1989).

Under these circumstances, it cannot be concluded that the applicant has established that the claim of continuous residence from prior to January 1, 1982 is credible and probably true. Therefore, the applicant has not established eligibility for temporary residence under the terms of the CSS/Newman Settlement Agreements and section 245A of the Act. As the applicant has not overcome the grounds for termination of status, the appeal must be dismissed.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.