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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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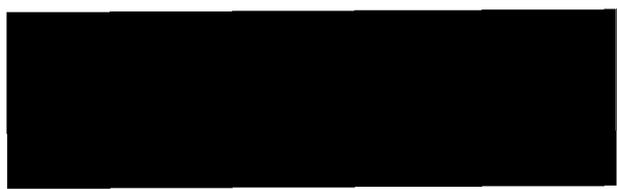
Applicant:



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.

Elizabeth McCormack

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, Orlando. 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 denied the application, finding that the applicant had not provided credible evidence to establish that she had entered the United States prior to January 1, 1982, and thereafter continuously resided in the United States in an unlawful status for the duration of the requisite period.

On appeal, counsel states that the affidavits are credible and sufficient to verify and authenticate the applicant's claim. Counsel requested a copy of the record of proceedings under the Freedom of Information Act (FOIA). The record reflects that the FOIA request was processed on January 24, 2010. (NRC2009069704).

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 245(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)(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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her 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).

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 submitted sufficient credible evidence to meet her burden of establishing that she (1) entered the United States before January 1, 1982, and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. The documentation that the applicant submits in support of her claim to have arrived in the United States before January 1, 1982 and lived in an unlawful status during the requisite period consists of declarations of relationship written by friends and other evidence. The AAO will consider all of the evidence relevant to the requisite period to determine the applicant's eligibility.

The applicant's sworn statement and the United States Citizenship and Immigration Services (USCIS) adjudicating officer's notes reveal that the applicant claimed she first entered the United States in March, 1981, from Toronto, Canada, into Detroit, Michigan, by boat. The applicant claimed on her class determination form that she first entered the United States without inspection in April, 1981. The applicant's entry into the United States was questioned by the director. The director stated that it is impossible to come by boat from Toronto to Detroit as there is no waterway other than Lake Erie and to get to Lake Erie you have to go thru Buffalo, New York, or Mississauga, Canada. Counsel provided no rebuttal on appeal.

The applicant submitted affidavits from [REDACTED] and [REDACTED] and declarations from [REDACTED] and [REDACTED] to establish her initial entry and residence in the United States during the requisite period. The declarations all contain statements

that the witnesses either have personally known or been acquainted with the applicant since the 1980s. [REDACTED] states that he has known the applicant since 1986 but does not explain the circumstances surrounding their meeting.

[REDACTED] and [REDACTED] attest to communicating with the applicant by writing letters and receiving cards and photographs from the applicant in the mail but have not provided any evidence of this communication. They claimed that they did not move to the United States until August, 1987. Therefore, the declarants did not have first-hand knowledge of events that happened in the United States until that date.

[REDACTED] states that the applicant was her roommate when they lived at [REDACTED] New York, New York, from 1980 to 1990. However, this conflicts with the applicant's sworn statement where she claimed that she entered the United States in March, 1981. The applicant also claimed that she resided at [REDACTED] with [REDACTED] and another girl from 1981 to 1990. After the applicant married in 1984, she claimed that she lived at the same address with her husband. This information is inconsistent with the applicant's current Form I-687, where she claimed to have worked in Florida from 1981-1995. This also conflicts with the information given by the applicant during an I-687 interview conducted on December 9, 1991. The USCIS adjudicating officer's notes reveal that the applicant claimed she resided at [REDACTED] Florida, from 1981 to 1990.

[REDACTED] states that the applicant resided at [REDACTED] from April, 1981 to December, 1990. This information is inconsistent with other evidence of record indicating that the applicant resided in New York from 1980-1990.

The inconsistencies regarding the date of the applicant's initial entry into the United States and residence are material to the applicant's claim in that they have a direct bearing on the applicant's continuous residence in the United States during the requisite period. No evidence of record resolves these inconsistencies. 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 petitioner submits competent objective evidence pointing to where the truth lies. 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. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In totality, the affidavits and declarations contained in the record do not include sufficient detailed information about the claimed relationship and the applicant's continuous residency in the United States throughout the requisite period. For instance, none of the witness supplies any details about the applicant's life, such as, knowledge about her family members, education, hobbies, employment or other particulars about her life in the United States. The declarants fail to indicate any other details that would lend credence to the claimed acquaintance with the applicant and the applicant's residence in the United States during the requisite period.

The affidavits and declarations do not 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 statements. To be considered probative and credible, witness affidavits 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. As the affidavits and declarations are inconsistent with each other and with other evidence of record, they will be given nominal weight.

On appeal, counsel states that the USCIS did not make any effort to verify the affidavits. The applicant bears the burden of proving by a preponderance of the evidence that she resided continuously in the United States throughout the requisite period and that the affidavits submitted have sufficient detail to establish the truth of their assertions. USCIS is not required to contact affiants to supplement their testimony.

An applicant applying for adjustment of status under this part has the burden of proving by a preponderance of evidence that he or she is eligible for adjustment of status under section 245a of the Act. 8 C.F.R. § 245a.2(d)(5). In the instant case, the applicant has failed to submit sufficient evidence to overcome the director's denial. The insufficiency of the evidence and the inconsistencies noted call into question the credibility of the applicant's claim of continuous unlawful residence in the United States throughout the requisite period. The evidence in its totality is insufficient to establish the applicant's 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 requisite period.

Therefore, 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*. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act.

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