



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

W

FILE:

MSC-05-354-10768

Office: NEW YORK

Date: AUG 06 2007

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:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, 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.


Robert P. Wiemann, 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 District Director, New York. 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, on September 19, 2005. The director determined the applicant had not demonstrated that she had continuously resided in the United States in an unlawful status for the requisite period, specifically noting that only two affidavits were submitted in support of the applicant's claim, and they were not credible as they were not supported by documents identifying the affiant, proof the affiant was in the United States during the statutory period, proof that there was a relationship between the affiant and the applicant, or a current telephone number. The director denied the application as 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.

The director issued a Notice of Intent to Deny (NOID) the I-687 application on March 6, 2006, noting that the two affidavits submitted by the applicant, from [REDACTED] and [REDACTED] in support of her application were not credible for the reasons noted above. The NOID also referred to the fact that the applicant was ten years old in 1981, the alleged year of entry into the United States, yet no evidence had been submitted from an adult who was responsible for her care and financial support. In rebuttal the applicant submitted a more detailed affidavit from [REDACTED] and a copy of his birth certificate. The director found these additional submissions insufficient to overcome the grounds for denial.

On appeal, the applicant submits additional documents and a brief asserting that the agency action denying the application was an abuse of discretion; that the documents submitted prove that the affiants resided in the United States during the requisite periods; and that it is not reasonable to expect more than affidavits from legalization applicants. The additional documents submitted on appeal were the passport of [REDACTED], issued in New York on September 21, 1981, which contained a stamp indicating that he was a lawful permanent resident before 1983; and a statement of benefits for [REDACTED] dated January 14, 1997, from his employer, The American Society for the Prevention of Cruelty to Animals, indicating that [REDACTED] had been an employee since 1973.

The AAO notes that the additional documents submitted on appeal indicate that the two affiants did enter the United States before 1982 and that one of them resided in the United States during the requisite period. The AAO also agrees with the applicant that, as a class member under the CSS/Newman (LULAC) Settlement Agreements, the applicant is not required to prove entry and residence in the United States with contemporaneous documents from the relevant time period. The AAO finds, however, that the director correctly denied the I-687 application because the documents submitted were not sufficient evidence of the applicant's entry into and residence in the United States during the requisite period.

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 from November 6, 1986 until the date of filing. Section 245A(a)(3) of the Act, 8 U.S.C. § 1255a(a)(3).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical 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 applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file. 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 periods, 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. *See* 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.* 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. *See* 8 C.F.R. § 245a.2(d)(6). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The credibility of an affidavit may be assessed by taking into account such factors as whether the affiant provided a copy of a recognized identity card, such as a driver's license; whether the affiant provided some proof that he or she was present in the United States during the requisite period; and whether the affiant provided a valid telephone number. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

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 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 issue in this proceeding is whether the applicant has furnished sufficient credible evidence to establish her continuous unlawful residence and continuous physical presence in the United States for the requisite periods. Here, the submitted evidence consists of one affidavit and one statement which is neither notarized nor signed under oath. These statements are not sufficient. They are not relevant, probative and credible.

The record indicates that the applicant was born in Mexico in February 1971. On her I-687 application she claims to have entered the United States in August 1981 at the border near San Diego, California; she claims affiliation with "St. Rosa R.C. Church" (no location given) from 1981 to the present; she claims that she has had no employment in the United States since entry other than as a housewife, and did not attend school in the United States until she took a class in 1996, and has no medical or dental records; she claims to have left the United States one time since her entry, in 1987. According to notes taken at her interview with CIS on March 6, 2006, the applicant stated that she traveled to Mexico to visit her parents in July 1986 and later returned to Mexico for a year and a half, from the middle of 1988 until August 1990. These statements are inconsistent with her I-687 application which indicates a sole absence in 1987.

The record contains statements from two individuals in support of the applicant's claim that she entered the United States in 1981 and resided unlawfully in the United States during the requisite period:

- (1) A statement (with no date and not notarized or signed under oath) from [REDACTED]. He states that he is godfather to [REDACTED] that he helped her come to the United States in 1981, that she lived with him until 1988, and that during that time he took care of her and helped her economically. He provided a telephone number and gave his address as [REDACTED] [REDACTED] in Brooklyn, the same address the applicant listed on her Form I-867 for the years 1981 through 1988. A copy of a passport for [REDACTED] confirms that he resided in the United States from before 1981 until at least 1983. The statement lacks any details of his relationship with the applicant or her parents; no explanation of how or why he took on the responsibility of raising a ten-year old child or why she did not attend school or how she spent those years. The lack of detail detracts from the credibility of the statement; the lack of a notarized affidavit also diminishes the weight of the statement.
- (2) An affidavit dated September 8, 2005, and a revised version dated March 4, 2006 (which is initialed, not signed), from [REDACTED]. Supporting documentation submitted with the affidavit include the affiant's driver license, issued in 2003, noting his address at [REDACTED] in Brooklyn, and proof of employment in the United States since 1973, clearly indicating that the affiant resided in the United States during the relevant time period. As the 2006 version of the

affidavit is not signed, it will not be given any weight; however, it does not differ significantly from the 2005 version. The affiant claims to have met the applicant in 1981 through his daughter Maritza because the two children played together and were close friends and they would enjoy meals and special occasions together over the years. He states that the applicant attended parties and spent many birthdays and holidays with them; and that he remembers the applicant traveling to Mexico briefly to see her parents in July 1986. The affidavit is detailed and generally consistent with the claims of the applicant, though it contradicts the 1987 travel date on the applicant's I-687 application. As with the statement of [REDACTED] however, it fails to provide sufficient detail of his knowledge of and relationship with the applicant that would lend credibility to his statements. He also fails to explain the applicant's living situation or address her lack of schooling. Although he claims that he met the applicant through her relationship with his daughter, there is no evidence from or about such daughter to lend credibility to this statement.

The affidavit and statement described above lack probative value and credibility for the reasons noted. Together they comprise, along with the applicant's own statements, the only documentation provided by the applicant as evidence of her residence in the United States for the requisite period. These documents are insufficient to support a conclusion that the applicant entered the United States before 1982 and resided in the United States for the requisite period. Moreover, neither the applicant nor [REDACTED] nor [REDACTED] provided any details regarding the applicant's childhood in the United States or why she never attended school or was separated from her parents. The record lacks any document that might lend credibility to the applicant's claim of entry and residence in the United States for the required time period. For the above noted reasons the documents submitted as evidence of entry and residence lack relevance, probative value and credibility.

The absence of sufficiently detailed supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite period detracts 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 paucity of credible supporting documentation and the applicant's reliance upon one statement and one affidavit, documents with minimal probative value, it is concluded that she has failed to meet her burden of proof and failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the date she attempted to file a Form I-687 application, 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.