



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
MSC-05-251-12923

Office: NEW YORK

Date: SEP 06 2007

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:

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, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined the applicant failed to submit credible documents that would constitute a preponderance of evidence as to her residence in the United States during the statutory period. As a result, the director denied the application.

On appeal, the applicant reiterated that she resided in the United States since 1981 and referred to the documentation she had already provided. She also explained the difficulty of retaining documentation over an extended period of time.

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 Immigration and Nationality Act (Act), 8 U.S.C. § 1255a(a)(2).

An applicant for adjustment to temporary resident status must 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).

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 applicant 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. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

An applicant for adjustment of status 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 and 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.* 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 issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that she resided in the United States from prior to January 1, 1982 through the date she attempted to file a Form I-687 application with the Service in the original legalization application period of May 5, 1987 to May 4, 1988. Here, the submitted evidence is not relevant, probative, and credible.

The record shows that the applicant submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to Citizenship and Immigration Services (CIS) on June 8, 2005. 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 applicant listed the following addresses during the requisite period: [REDACTED] Bellerose, New York from November 1981 to February 1985; and [REDACTED], Bellerose, New York, from March 1985 to February 1991. At part #33 where applicants were asked to list all employment in the United States since entry, the applicant indicated only that she was self-employed as a cleaner in Queens, New York from May 1983 to present.

With the Form I-687 Application, the applicant included two affidavits. The affidavit from [REDACTED] explained that the affiant has known the applicant since November 1981. Since that time, the applicant "used to work as cleaner in different houses shops and offices. I used to see her doing hard work and sometime[s] she] talked to me at the bus stop while waiting for her bus. She also worked at my home for few years from 1986 to 1989." This affiant failed to confirm the applicant's continuous residence in the United States for any specific time period prior to 1986. The affiant also failed to provide the address at which the applicant resided during the requisite period. As a result, this affidavit is found to be lacking in detail. Although not required, this affiant also failed to provide documentation of his identity and presence in the United States during the requisite period.

The applicant also included an affidavit from [REDACTED]. In this affidavit, [REDACTED] stated, "I met [the applicant] in November 1981. She used to work as cleaner at my friends home. Since that time I know her personally and once find an odd job (cleaner) for her in October 1987 . . . I used to see her occasionally." This affidavit is inconsistent with the information provided by the applicant on Form I-687. Specifically, the applicant indicated she did not begin working in the United States until May 1983, yet the affiant's statement indicates he met the applicant when she was working as a cleaner at his friend's home in November 1981. This inconsistency calls into question whether the affiant can actually confirm the applicant's residence in the United States during the requisite period. In addition, the affiant failed to confirm the applicant's continuous residence in the United States for any specific time period. The affiant also failed to provide the address at which the applicant resided during the requisite period. As a result, this affidavit is found to be lacking in detail. Although not required, this affiant also failed to provide documentation of his identity and presence in the United States during the requisite period.

The record of the applicant's interview with an immigration officer on March 10, 2006 indicates the applicant stated that she entered the United States in August 1981; she entered the United States with her father and she was supported by her father's cousin. The record indicates this cousin was named [REDACTED].

The director issued a Notice of Intent to Deny (NOID) to the applicant on March 14, 2006. The NOID explained that the applicant had submitted only one affidavit in support of her claim, which the director found to be not credible. The director also noted that the applicant failed to provide documentation that she worked for affiant [REDACTED] and that [REDACTED] financially supported her. It appears that the director may have erroneously referred to [REDACTED] as the applicant's mother's cousin, instead of as her father's cousin. In response to the NOID, the applicant submitted proof of the death of [REDACTED].

In denying the application, the director explained that the evidence provided in response to the NOID was insufficient to overcome the grounds for denial. The applicant failed to submit credible documents that would constitute a preponderance of evidence as to her residence in the United States during the statutory period.

On appeal, the applicant provided two affidavits, including one from herself and one from [REDACTED]. In the applicant's affidavit, she stated that she stayed with her mother's cousin [REDACTED] when she came to the United States, and that her brother supported her. The applicant also explained her inability to obtain additional documentation of this support by stating that her brother never provided her with bills of his expenses. This affidavit is found to be inconsistent with the record of the applicant's statements in her interview with the immigration officer. The applicant indicated orally that she was supported by her father's cousin, yet her affidavit states that she was supported by her brother. In addition, the record of the interview with an immigration officer indicates the applicant referred to [REDACTED] as her father's cousin. However, the applicant referred to [REDACTED] as her mother's cousin. These inconsistencies call into question the

applicant's account of her periods of residence in the United States and, as a result, whether she actually resided in the United States during the requisite period.

The applicant also provided an affidavit from [REDACTED] the wife of [REDACTED] [REDACTED] explained that the applicant is related to [REDACTED]. When the affiant married [REDACTED] in 1983 the applicant was still in the United States. When the affiant came to the United States in 1985 the applicant was still residing with [REDACTED]. This affiant did not specifically confirm the applicant's residence in the United States for the portion of the requisite period falling after 1985. In addition, the affiant admitted she was not a first-hand witness to the applicant's residence in the United States during the requisite period prior to 1985, as the affiant did not enter the United States until 1985. Lastly, although not required, the affiant failed to provide any supporting documentation of her identity or presence in the United States during the requisite period.

In summary, three affidavits provided by the applicant were insufficiently detailed, and two affidavits conflict with statements on Form I-687 and in the interview with an immigration officer. The affidavit from [REDACTED] fails to confirm the applicant's continuous residence in the United States for any specific time period prior to 1986; and failed to provide an address at which the applicant resided during the requisite period. The affidavit from [REDACTED] fails to confirm the applicant's residence in the United States for any specific time period, fails to provide an address at which the applicant resided during the requisite period, and is inconsistent with the information provided on Form I-687. The affidavit from [REDACTED] did not specifically confirm the applicant's residence in the United States after 1985, and the affiant could have no first-hand knowledge of the applicant's residence in the United States prior to 1985 because the affiant did not arrive in this country until 1985. The applicant's affidavit is found to be inconsistent with the record of her statements in the interview with the immigration officer.

The absence of sufficiently detailed and consistent supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts 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 contradictory statements contained in the applicant's I-687 application, oral statements in the interview with an immigration officer, and supporting affidavits; and given the applicant's reliance upon documents with minimal probative value, it is concluded that she has 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.