

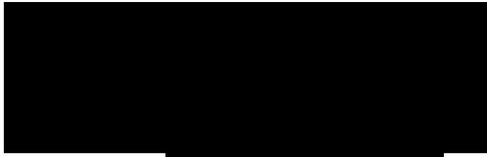
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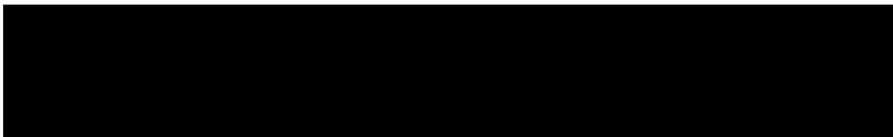


FILE: MSC-05-237-14531

Office: LOS ANGELES

Date: SEP 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, Los Angeles, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined the applicant failed to meet her burden of proof by a preponderance of the evidence that she resided continuously in the United States for the requisite periods. As a result, the director denied the application.

On appeal, the applicant attempted to explain an inconsistency the director had identified in her prior statements.

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 Immigration and Naturalization Service (INS) 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 May 25, 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 her only address during the requisite period as [REDACTED] from September 1981 to April 1988. At part #32 where applicants were asked to list all absences from the United States since entry, the applicant listed only one trip during the requisite period, to the Philippines, from December 1986 to January 1987. The applicant included no documentation with her Form I-687 in support of her claim of continuous residence in the United States throughout the requisite period.

The record indicates the applicant was interviewed by an immigration officer on January 10, 2006. At the interview, the applicant stated in a sworn written statement, "I . . . came to the United States with my father as visitors in 1984 and stayed for less than six months. I stayed in Philippines [until] 1995." This statement is inconsistent with the applicant's statement in Form I-687, where she indicated she resided in the United States continuously from September 1981 to April 1988. This inconsistency, as well as the sworn statement taken in isolation, both call into question whether the applicant actually resided in the United States continuously throughout the requisite period.

The director issued a Notice of Intent to Deny (NOID) on January 10, 2006. This NOID referred to the applicant's statements during her interview with the immigration officer and stated that the

applicant had failed to establish continuous unlawful presence in the United States before January 1, 1982 through the date the application is considered filed pursuant to the settlement agreements. In response to the NOID, the applicant submitted a letter explaining she was no longer in contact with her former legal representative, but providing no additional evidence.

In denying the application, the director explained that the applicant had testified under oath both orally and in writing that in 1984 she first entered the United States with a visitor visa with her father, and remained in the Philippines until 1995. As a result, the director determined the applicant had failed to meet her burden of proof by a preponderance of the evidence that she resided continuously in the United States for the requisite periods. Therefore, the director denied the application.

On appeal, the applicant attempted to explain her statements in her interview with the immigration officer. The applicant explained that she had only provided the officer with the date she came to the United States with her father for the first time. Prior to that date, she had entered the United States alone. The applicant listed her dates of entry into the United States as follows: First entry, September 1981; Second entry, 1984; Third entry, 1987; and Fourth and last entry; 1995. The statements the applicant provided on appeal are found to be inconsistent with her statements on Form I-687 and in her interview with the immigration officer. Specifically, on Form I-687 the applicant indicated she did not re-enter the United States anytime between 1981 and 1987, while the information provided in her appeal lists an entry in 1984. In addition, the applicant stated in her interview that she left the United States in 1984 and did not re-enter until 1995, while the applicant's statements on appeal indicate she entered the United States again in 1987. These inconsistencies call into question whether the applicant actually resided in the United States during the requisite period.

In summary, the applicant provided no documentation to support her claim of continuous residence throughout the requisite period. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). In addition, the applicant's statements on Form I-687 were inconsistent with her written and oral statements in her interview with the immigration officer and with her statements on appeal.

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 contradictions contained in the applicant's I-687 application, record of interview, sworn statement, and statement on appeal; and given the applicant's failure to present any supporting documentation, 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.