



U.S. Citizenship
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Services

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FILE: [REDACTED]
MSC-05-239-14868

Office: NEW YORK

Date: SEP 06 2007

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Temporary Resident Status under 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, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined the applicant had failed to prove by a preponderance of the evidence that she has resided in the United States for the requisite periods, is admissible under the provisions of Section 245A of the Immigration and Nationality Act, and is otherwise eligible for adjustment of status under this section. As a result, the director denied the application.

On appeal, the applicant submitted a written statement introducing the additional evidence she provided, attempting to explain the applicant's choice to depart the United States during the requisite period to give birth to her child in Jamaica, and reiterating her belief that she meets the requirements for legalization. The applicant also included an additional affidavit with supporting documentation, as well as evidence that a potential additional affiant who could have confirmed her residence in the United States is now deceased.

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 27, 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 addresses during the requisite period as follows: [REDACTED] from January 1981 to October 1982, and again from January 1983 to April 1986; and [REDACTED] from April 1986 to July 1988. At part #32 where applicants were asked to list all absences from the United States since entry, the applicant indicated she went to Jamaica to give birth from October 1982 to January 1983; and she went to Jamaica to get married from July 1988 to January 1991. At part #33 where applicants were asked to list all employment in the United States since entry, the applicant listed the following positions during the requisite period: child care/cleaning for [REDACTED] from February 1982 to May 1985; and [REDACTED] PC from June 1985 to June 1988.

The applicant's statements on the Form I-687 application indicate she did not reside continuously in the United States throughout the requisite period. An applicant shall be regarded

as having resided continuously in the United States if at the time of filing an application for temporary resident status, no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, through the date the application is filed, unless the applicant can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the applicant was maintaining residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.1(c). The applicant indicated on Form I-687 that she was absent from the United States from October 1982 to January 1983. This absence spans the complete months of November and December. As a result, the absence is found to exceed 45 days. The applicant provided no evidence of emergent reasons preventing the applicant from returning to the United States during the allowed time period. Therefore, the applicant is found not to have resided continuously in the United States throughout the requisite period.

In support of her Form I-687 application, the applicant also provided multiple affidavits confirming the applicant's residence in the United States during the requisite period. In their affidavits, both [REDACTED] confirmed that they have known the applicant for 23 and 20 years, respectively. However, neither of these affiants confirmed that the applicant resided in the United States at any time.

[REDACTED] confirmed that the applicant has lived in the United States "since 1986." This affidavit fails to confirm the applicant's residence in the United States throughout the requisite period and calls into question whether the applicant actually entered the United States prior to January 1, 1982. In addition, [REDACTED] failed to describe how he became acquainted with the applicant. As a result, this affidavit is found to be lacking in detail.

[REDACTED] confirmed that she has known the applicant since 1978. In her affidavit dated April 7, 2005, [REDACTED] referred to the applicant's activities "[o]ver the past 20 years while living in the USA." This affidavit appears to confirm the applicant's residence in the United States only since 1985. Since the affiant knew the applicant starting in 1978, the affiant's failure to specifically confirm the applicant's residence in the United States since prior to January 1, 1982 calls into question whether the applicant actually entered the United States prior to this date.

[REDACTED] Congregation Secretary for the East Manhattan Congregation, provided an affidavit for the applicant. In the affidavit, [REDACTED] confirmed the applicant's activities beginning in 1991 and failed to confirm her residence in the United States for any part of the requisite period.

In her affidavit dated April 23, 2005, [REDACTED] confirmed that she has known the applicant for approximately forty years. [REDACTED] confirmed that the applicant has lived in the United States since 1986. The affiant also stated, "To my knowledge, [the applicant] has consistently resided in the USA, and has never left the country since 1986." This affidavit appears to confirm the applicant's residence in the United States only since 1986. Since the affiant knew the

applicant for approximately forty years, the affiant's failure to specifically confirm the applicant's residence in the United States since prior to January 1, 1982 calls into question whether the applicant actually entered the United States prior to this date.

In their affidavits, [REDACTED] and [REDACTED] both failed to confirm that the applicant resided in the United States during the requisite period.

The record indicates the applicant was interviewed by an immigration officer on March 6, 2006 regarding her legalization application. In the interview, the applicant stated that she entered the United States in 1978. This statement is found to be inconsistent with the applicant's statements on Form I-687, where the applicant indicated her first period of residence at any address in the United States began in January 1981. This inconsistency calls into question whether the applicant actually entered the United States prior to January 1, 1982.

In response to a Notice of Intent to Deny (NOID) issued on March 8, 2006, the applicant provided a statement from an individual named [REDACTED] who was assisting her; multiple affidavits; copies of recent income tax documents for herself; birth documentation for her child; and her marriage documentation. It is noted that [REDACTED] written statement refers to documents of the applicant having been lost in a hurricane in Jamaica. However, Mr. [REDACTED] did not indicate he has any personal knowledge of the facts he describes. As a result, these statements are afforded no weight. In addition, although [REDACTED] did not indicate he is serving as counsel to the applicant, it is noted that the assertions of counsel will not satisfy the petitioner's burden of proof without documentary evidence to support the claim. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

[REDACTED] all confirmed they have known the applicant since dates that fall after the end of the requisite period. In his letter that was undated, [REDACTED] confirmed having known the applicant for six years. [REDACTED] did not confirm the applicant's residence in the United States for any period. The applicant's husband, [REDACTED], confirmed in a written statement, which was not notarized, that the applicant entered the United States in 1978. This information was also confirmed in another affidavit from [REDACTED]. These statements are found to be inconsistent with the applicant's statements on Form I-687, where the applicant listed her first period of residence at any address in the United States as having begun in January 1981. [REDACTED] second affidavit also conflicts with her first affidavit that merely confirms the applicant's residence in the United States since 1986. These inconsistencies call into question whether the applicant actually entered the United States prior to January 1, 1982.

In denying the application, the director mentioned that the applicant failed to provide documentation of her employment during the requisite period, although she listed employment positions on the Form I-687 application. The director also mentioned that the applicant had

failed to provide any documentation from the landlord at the address on [REDACTED] where she resided for a significant portion of the requisite period. Lastly, the director questioned whether the applicant would have returned to Jamaica merely to give birth to her son, and then immediately return to the United States, rather than choosing to give birth in the United States.

On appeal, the applicant explained her lack of documentation based on the passage of time and her transience. The applicant provided documentation of the death of her former employer, Dr. [REDACTED]. She also described attempts to obtain additional employment documentation. The applicant explained that she was not the tenant of the [REDACTED]. She also included a letter from [REDACTED] former tenant at the [REDACTED], as well as documentation of [REDACTED] residence at that address on two different dates during the requisite period. The letter from [REDACTED] confirmed "[o]n two different occasions in 1982 and again in 1983 to I believe 1986 [the applicant] shared the apartment." This letter is not notarized, and it is not accompanied by identity documentation for [REDACTED]. In addition, the letter is inconsistent with the information on Form I-687, which indicates the applicant lived at the [REDACTED] address starting in January 1981, as opposed to 1982. This inconsistency calls into question whether the applicant actually entered the United States prior to January 1, 1982 and whether she resided in the United States throughout the requisite period.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period; she has admitted to having been absent from the United States for a significant period of time; and she has submitted affidavits that either do not document her presence in the United States prior to January 1, 1982 or during the requisite period, or conflict with her written statements on Form I-687. On Form I-687 the applicant listed a continuous absence from the United States of greater than two months. The affidavits from [REDACTED] fail to confirm that the applicant resided in the United States for any part of the requisite period. The affidavit from [REDACTED] merely confirms that the applicant has lived in the United States "since 1986," and is lacking in detail. Similarly, although [REDACTED] both indicated they have known the applicant since prior to the start of the requisite period, they merely confirmed the applicant's having lived in the United States since approximately 1985 and since 1986, respectively. The applicant's statements in the interview with an immigration officer, the letter from the applicant's husband, the second affidavit from [REDACTED], and the letter from [REDACTED] are all inconsistent with the applicant's statements on Form I-687. [REDACTED] second affidavit also conflicts with her first affidavit.

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 applicant's statements regarding an extended absence from the United States during the requisite period; the contradictory statements contained in the

applicant's I-687 application, record of her interview with an immigration officer, and supporting affidavits; and 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.