



U.S. Citizenship
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Services

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FILE: [REDACTED]
MSC 06 098 22409

Office: LOS ANGELES

Date: **APR 15 2008**

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 National Benefits Center. If your appeal was sustained, or if the matter 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, California. The appeal will be dismissed.

The district director denied the application because the applicant failed to demonstrate credibly that she entered the United States before January 1, 1982, and subsequently resided there in a continuous unlawful status.

On appeal, the applicant submitted additional evidence and stated that she had resided, and been physically present in, the United States during the requisite periods.

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 was filed. Section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2).

For purposes of establishing residence 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.

As to the requirement of continuous residence in the United States from January 1, 1982 through the date the application is filed, the regulation at 8 C.F.R. § 245a.2(h)(1) provides that an applicant shall be regarded as having resided continuously if no single absence during the salient period was longer than 45 days and the aggregate of all absences does not exceed 180 days.

The applicant has the burden of proving by a preponderance of the evidence that he or she resided continuously in the United States from January 1, 1982 until he or she filed his or her application, was continuously physically present in the United States from November 6, 1986 until the date of filing the application, 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).

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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant’s own testimony. 8 C.F.R. § 245a.2(d)(6).

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 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 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.

The applicant submitted the instant Form I-687 on January 6, 2006 under the name [REDACTED]. The space reserved to report other names she has used was left blank. The record contains:

- the applicant’s birth certificate,
- California driver’s licenses issued to [REDACTED] on January 27, 1992 and October 14, 1998,
- an California interim driver’s license issued to [REDACTED] on March 15, 1995,
- a California driver’s license issued to [REDACTED] on November 21, 2003,
- an immunization record,
- a letter dated June 28, 2005 from a medical doctor,
- the May 27, 1990 birth certificate of [REDACTED]
- a consumer contract and promissory note,
- monthly statements pertinent to bank accounts of [REDACTED]
- a copy of the applicant’s driving record,
- what appears to be a receipt for purchase of a sound system,
- a license to carry a firearm,

- form affidavits dated August 23, 2000, August 29, 2000, August 31, 2000, September 9, 2000, and September 10, 2000,
- an affidavit dated September 6, 2006,
- an affidavit dated September 7, 2006,
- an Affidavit of Cohabitation dated August 29, 2000,
- interviewing officer's notes from the applicant's July 28, 2006 interview,
- a Form G-325 Biographic Information statement,
- the applicant's Form For Determination of Class Membership, and
- the applicant's own statement dated September 10, 2006.

The record contains no other evidence pertinent to the applicant's continuous residence in the United States during the salient period.

The applicant's birth certificate shows that she was born [REDACTED] on October 18, 1966 in Morazan, El Salvador, to [REDACTED] and [REDACTED].

The driver's license issued to [REDACTED] on January 27, 1992 shows that she lived at [REDACTED] in El Monte, California and that her date of birth is October 18, 1966. The license issued to [REDACTED] on October 14, 1998 shows that she lived at [REDACTED] in Los Angeles. The photographs on those licenses appear to be of the applicant. Notwithstanding that the applicant applied as [REDACTED] and indicated on the Form I-687 that she had never used any other name, this office finds that the licenses in question were issued to the applicant, and that the various documents in the record bearing the name [REDACTED] and variations of that name pertain to the applicant.

The birth certificate of [REDACTED] shows that he was born on May 27, 1990 in Los Angeles County to [REDACTED] and a woman with the birth surname of [REDACTED] apparently the applicant.

The immunization record indicates that the applicant received various vaccinations from September 22, 1981 to February 13, 1984.

The June 28, 2005 letter from a medical doctor indicates that the doctor treated the applicant from November 27, 1984 through January 14, 1985.

The applicant's driving record was issued on March 18, 1997 and shows that her driving privilege was suspended on March 2, 1997 for a violation of California Vehicle Code section 16004A, failing to submit a required accident report, and a violation of California Vehicle Code section 16070, being involved in an accident and unable to produce proof of insurance. (Case number [REDACTED])

The document that appears to be a receipt for a sound system is in Spanish and is not accompanied by the English translation and certification required by 8 C.F.R. § 103.2(b)(3). The contents of that letter will not be considered.

The August 9, 2000 affidavit is from [REDACTED], states, "I lived with [REDACTED] cousin, she came to visit our house in 1981, we became friends and I been seeing her all this years." [Errors in the original.] That affidavit further states, "[T]he longest period during the residence described in which [the affiant] has not seen the applicant is ____ (Years) ____ (Months). Slashes were drawn through the areas for reporting the period during which the affiant and the applicant were not in touch. That affidavit was accompanied by a photocopy of the affiant's California driver's license, which was issued on July 29, 1997. It was not accompanied by any evidence that the affiant was in the United States any earlier.

The August 23, 2000 form affidavit is from [REDACTED] and states, "We worked from 1982 to 1983 at the same place "Atlas" we became friends and we been seeing very often." That affidavit stated that from April 1982 to 1983 the applicant lived in Los Angeles, California. That affidavit states, "[T]he longest period during the residence described in which [the affiant] has not seen the applicant is ____ (Years) ____ (Months). Slashes were drawn through the areas for reporting the period during which the affiant and the applicant were not in touch. That affidavit was accompanied by a photocopy of the affiant's California driver's license, which was issued on January 25, 2000. It was not accompanied by any evidence that the affiant was in the United States any earlier.

The August 29, 2000 form affidavit is from [REDACTED] and states, "We were living at the same street 'Wall' for about 2 months, we became very good friends and I been visiting her very often at her house." [Errors in the original.] That affidavit stated that from February 1983 to "Present" the applicant lived in Los Angeles, California. That affidavit states, "[T]he longest period during the residence described in which [the affiant] has not seen the applicant is ____ (Years) ____ (Months). Slashes were drawn through the areas for reporting the period during which the affiant and the applicant were not in touch. That affidavit was accompanied by a photocopy of the affiant's California driver's license, which was issued on January 12, 2000. It was not accompanied by any evidence that the affiant was in the United States any earlier.

The September 10, 2000 form affidavit is from [REDACTED] and states, "[The applicant] is a good friend of my mother, she visit my house very often, we are very good friends." [Errors in the original.] That affidavit stated that from August 1985 to "Present" the applicant lived in Los Angeles, California. That affidavit states, "[T]he longest period during the residence described in which [the affiant] has not seen the applicant is ____ (Years) ____ (Months). Slashes were drawn through the areas for reporting the period during which the affiant and the applicant were not in touch. That affidavit was accompanied by a photocopy of the affiant's California driver's license.

The date of issue of that license appears to be February 29, 1996. The affidavit was not accompanied by any other evidence that the affiant was in the United States during the salient period.

The August 9, 2000 form affidavit is from [REDACTED] and states, “[The applicant] was the babysitter of my daughter from 12/1986 to 12/1988. She took care of my child 5 days a week, after she visit me very often, we are very good friends.” [Errors in the original.] That affidavit states that from December 1986 to “Present” the applicant lived in Los Angeles, California. That affidavit states, “[T]he longest period during the residence described in which [the affiant] has not seen the applicant is ____ (Years) ____ (Months). Slashes were drawn through the areas for reporting the period during which the affiant and the applicant were not in touch. That affidavit was accompanied by a photocopy of the affiant’s California driver’s license, which was issued on January 12, 2000. It was not accompanied by any evidence that the affiant was in the United States any earlier.

A September 10, 2000 form affidavits is from [REDACTED] and states, “[The applicant and the affiant] were working at the same place during one year, we became friends and I been seeing her since then very often.” [Errors in the original.] That affidavit stated that from May 1988 to “Present” the applicant lived in Los Angeles, California. That affidavit states, “[T]he longest period during the residence described in which [the affiant] has not seen the applicant is ____ (Years) ____ (Months). Slashes were drawn through the areas for reporting the period during which the affiant and the applicant were not in touch. Although not required, no driver’s license or other evidence of the affiant’s presence in the United States accompanied that affidavit.

The September 9, 2000 form affidavit is from [REDACTED] and states, “I was the manager at the place where she was living during those years. She has been my friend since then.” That affidavit states that from February 1987 to 1989 the applicant lived in Los Angeles, California. That affidavit states, “[T]he longest period during the residence described in which [the affiant] has not seen the applicant is ____ (Years) ____ (Months). Slashes were drawn through the areas for reporting the period during which the affiant and the applicant were not in touch. That affidavit was accompanied by a photocopy of the affiant’s California driver’s license, which was issued on August 3, 1999. It was not accompanied by any evidence that the affiant was in the United States any earlier.

The August 29, 2000 affidavit is from [REDACTED] and states, “We were living at the same street, we become friends, I been seeing her very often all these years.” [Errors in the original.] That affidavit states that from January 1991 to “Present” the applicant lived in Los Angeles, California. That affidavit states, “[T]he longest period during the residence described in which [the affiant] has not seen the applicant is ____ (Years) ____ (Months). Slashes were drawn through the areas for reporting the period during which the affiant and the applicant were not in touch. That affidavit was accompanied by a photocopy of the affiant’s California driver’s license, which was issued on August 3, 1999. It was not accompanied by any evidence that the affiant was in the United States any earlier.

The September 6, 2006 affidavit is from [REDACTED], who states that he and the applicant both resided at [REDACTED] in Los Angeles during some unstated period, and that that “to his personal knowledge the applicant has resided in the United States since 1981.” That affidavit did not discuss the applicant’s admitted absences from the United States.

The September 7, 2006 affidavit is from [REDACTED] who states that the applicant was her client at a beauty salon and that “to his [sic] personal knowledge the applicant has resided in the United States since 1981.” That affidavit did not discuss the applicant’s admitted absences from the United States.

The August 29, 2000 Affidavit of Cohabitation is a form affidavit and states that the applicant lived with the affiant, [REDACTED] at [REDACTED] in Los Angeles from March 1984 to December 1984 and asserts that “[The applicant] contributed with me a percent of the total maintenance cost – such as tent payment, and all utilities payment, [and that] all the payment were in [the affiant’s] name.” [Errors in the original.] That affidavit was accompanied by the affiant’s California driver’s license, which was issued on September 25, 1996. It was not accompanied by any evidence that the affiant was in the United States any earlier.

The interviewing officer’s notes from the applicant’s July 28, 2006 interview show that the applicant stated that she first came to the United States during 1979. Although the applicant has indicated on the Form I-687 application that she did not return to El Salvador until 1985, the applicant also stated, at her interview, that she met her first child’s father in El Salvador in 1980 in secondary school, a year during which she claimed, on the I-687 not to have been in El Salvador.

This office further notes that the applicant claimed, on the instant Form I-687 and elsewhere, to have first entered the United States during 1979, during which year she turned 13 years old. Further, various evidence in the record appears to indicate that her parents remained in El Salvador. Although these facts may be reconcilable, they raise the issue of the reliability of the assertions and evidence in this matter.

The applicant stated that she went to El Salvador again during August of 1987, and then returned to the United States during September 1987. In her Form For Determination of Class Membership, the applicant stated that she left the United States on August 8, 1987 and returned to the United States on September 3, 1987.

The interviewing officer at another interview, held on March 4, 2005, reported that the applicant stated that she came to the United States during 1982 or 1983, and that when questioned she replied that she was sure of that information.

At that interview the applicant stated that [REDACTED] is her aunt and that she never worked with her. This is consistent with them sharing the same family name, but inconsistent with the attestation of [REDACTED], that they met when working together from 1982 to 1983.

The applicant further stated that [REDACTED], who provided the August 29, 2000 affidavit, is her sons' father. The applicant stated that [REDACTED], who provided the August 9, 2000 form affidavit, and stated that the applicant was her baby sitter and they became good friends, is the applicant's sister.

Finally, the applicant stated that she believes that she only left the United States one time between 1981 and 1988, to visit her mother in El Salvador, which visit was during 1987. This office notes that statement conflicts with the applicant's previous statements that she also went to El Salvador during 1985 to give birth. This office believes that, notwithstanding the passage of time, a mother would be unlikely to forget that event, or when and where it took place.

In the Notice of Decision, dated August 14, 2006, the director noted the discrepancies in the evidence and the applicant's assertions and denied the application, finding that the applicant had failed to credibly demonstrate continuous unlawful residence in the United States from prior to January 1, 1982, through May 4, 1988.

On appeal, the applicant submitted her personal statement of September 10, 2006 and some of the documentary evidence listed and described above. In her September 10, 2006 statement the applicant asserted that she had been living in the United States since 1979, but was paid in cash and paid her bills in cash, and therefore has no contemporaneous evidence in support of that assertion. She also stated that she was confused at her interview and misstated the dates of her absences from the United States.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate continuous unlawful residence in the United States from prior to January 1, 1982, through May 4, 1988.

On the Form I-687 dated December 29, 2005 the applicant stated that she worked (1) from 1980 to October 1985 as a waitress at the Pacific Restaurant, no location listed, (2) from November 1985 to May 1986 for [REDACTED], (3) from 1988 to 1990 as a self-employed babysitter, (4) from 1990 to 1998 in sales at the Los Amigos Mall, (5) from 1998 to 1999 in security at Los Amigos Mall, from 1999 to November 2001 as a homemaker, and (6) from November 2001 to Present (December 29, 2005) as the owner/manager of Three Brother's Beauty Salon.

On a Form G-325A Biographic Information form in the record, however, the applicant stated that she worked from "1998 to Present Time" (December 20, 2006) as manager of "Tree (sic) Brothers in Los Angeles." That employment history conflicts with the employment history on the instant Form I-687.

[REDACTED]' August 23, 2000 assertion that the applicant worked at "Atlas" during 1982 and 1983 conflicts with the applicant's assertion, on the Form I-687 dated December 29, 2005, that she worked as a waitress at the Pacific Restaurant from 1980 to October 1985.

Finally, at her interview, on March 4, 2005, the applicant stated that she came to the United States during 1982 or 1983, that she worked in a position related to fabric for six or eight months, and that she then worked at a swap meet for five or six years. That employment history conflicts with the employment history shown on the December 29, 2005 Form I-687.

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. Further, the applicant must resolve any inconsistencies in the record with competent, independent, objective evidence. Attempts to explain or reconcile such inconsistencies, absent competent objective evidence sufficient to demonstrate where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (Comm. 1988). That the applicant has provided such divergent accounts of her employment history raises the issue of the reliability all of her assertions and all of the evidence in this matter.

On the Form I-687 dated December 29, 2005 the applicant stated that she lived (1) from 1979 to 1988 at [redacted] in Los Angeles, (2) from 1988 to [Blank] at some unstated location in Los Angeles, (3) from 1998 to 1999 at [redacted] in Los Angeles, (4) from 1999 to 2001 at [redacted] in Los Angeles, and (5) from 2001 to Present (December 29, 2005) at [redacted] in Los Angeles.

Some evidence in the record, however, does not support that asserted residential history. On a Form G-325A Biographic Information form the applicant stated that she lived at [redacted] in Los Angeles from 1998 to Present Time (December 20, 2006).

The September 6, 2006 affidavit of [redacted] states that he and the applicant both resided at [redacted] in Los Angeles during some unstated period, which conflicts with the residential history the applicant reported on the Form I-687 dated December 29, 2005.

[redacted]'s August 29, 2000 statement that the applicant lived on Wall Street at some unstated time prior to February 1983 appears to conflict with the applicant's assertion, on the Form I-687 dated December 29, 2005, and elsewhere in the record, that she lived at [redacted] in Los Angeles beginning when she first entered the United States in 1979 and continuing through 1988.

The California Certificate of Title shows that on March 28, 1998 the applicant lived at "[redacted]" in El Monte, California, rather than at either [redacted] in Los Angeles or at some other unidentified location in Los Angeles. This conflicts with the residential history reported on the Form I-687 dated December 29, 2005.

The driver's license issued to the applicant on January 27, 1992 show her address as [redacted] in El Monte, California, rather than Los Angeles, which, again, conflicts with the residential history the applicant reported on the Form I-687 dated December 29, 2005.

The license to carry a firearm, which has an expiration date of July 31, 2002, gives the applicant's address as [REDACTED] in Bloomington, California. This also appears to conflict with the residential history reported by the applicant.

The applicant's residential history as she reported it on the Form I-687 is inconsistent with the addresses shown on some of the evidence in the record. Again, these inconsistencies must be reconciled with independent objective evidence required by *Matter of Ho*. And again, these contradictions, without reconciliation, detract yet further from credibility of the applicant's assertions and the evidentiary value of the evidence submitted in this matter.

The record in the instant case is ripe with contemporaneous evidence that, if believed, shows that the applicant has lived in the United States at various times. Even if that evidence is believed, however, it does not settle the issue of whether the applicant has demonstrated that she entered the United States before January 1, 1982 and thereafter continuously resided there. That issue hinges on whether the applicant's admitted absences are excused by the applicable statutes and regulations, set out above, or whether they were sufficient to break continuous residence. The applicant's establishment of continuous residence also hinges on whether she can show that she entered the United States prior to January 1, 1982.

At her March 4, 2005 interview the applicant stated that she did not enter the United States until 1982 or 1983, and that she was sure of that fact. If that is so, then she is ineligible. In her September 10, 2006 statement, however, she insisted that she misspoke at that interview, and actually entered the United States during 1979 as she stated on the instant Form I-687.

As was mentioned above, the record contains a wealth of purportedly contemporaneous evidence of residence. A photocopy of applicant's immunization record, which indicates that she received vaccines at the San Judas Medical Group as early as September 22, 1981, is the earliest documentation. Each entry on that form is stamped with the same address stamp, written in the same hand, and apparently written on the same day. That record does not appear to be contemporaneously produced at all. Instead, it appears to have been copied by hand, accurately or otherwise, from clinic records for the purpose of submission as support for the instant petition. That evidence is insufficient to overcome the applicant's assertion and reiteration, at her March 4, 2005 interview, that she did not enter the United States until 1982 or 1983.

The next piece of evidence pertinent to the applicant's early residence or presence in the United States is also not contemporaneous evidence. It is the June 28, 2005 medical doctor's letter. It states that the applicant was under his care from November 17, 1984 to January 14, 1985. That letter is not accompanied by contemporaneous evidence such as medical records.

The first pieces of truly contemporaneous evidence in the record are the birth certificate of [REDACTED], born May 27, 1990 and the applicant's bank statement, showing that she held a United States bank account during May and June of 1990. Although the record is ripe with evidence from

those months forward,¹ there is a distinct dearth of contemporaneous evidence of residence prior to that date.

The evidence in the record is therefore insufficient to show that the applicant entered the United States prior to January 1, 1982. The applicant has not, therefore, demonstrated that she has lived here since that date in an unlawful status. The application was correctly denied on this basis, which has not been overcome on appeal.

The applicant failed to sustain her burden of establishing continuous unlawful residence in the United States during the requisite period. The applicant is therefore ineligible for temporary resident status under section 245A of the Act.

In legalization proceedings, the burden of proving eligibility for the benefit sought remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. The appeal will be dismissed.

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

¹ The record contains many items of contemporaneous documentary evidence for dates after May 1990. Because they are not directly relevant to the applicant's residence in the United States during the requisite period, they have not been itemized in this decision.