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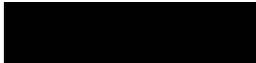
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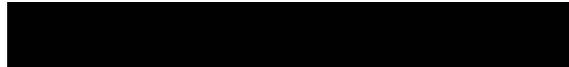


Office: NATIONAL BENEFITS CENTER

Date:

MSC 06 046 11422

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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your case is reinstated or remanded for further action, you will be contacted.


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 Director, National Benefits Center. The appeal will be dismissed.

The record contains a Form G-28 showing that the applicant agreed to be represented by [REDACTED] of Irvington, New Jersey. Reference to a website maintained by the Executive Office of Immigration Review (EOIR) at <http://www.justice.gov/eoir/profcond/chart.htm> (Accessed April 15, 2008) indicates that [REDACTED] was convicted, pursuant to his plea, of a violation of 18 U.S.C. § 1546(a), misuse of a visa, a serious crime within the meaning of 8 C.F.R. § 1003.102(h). On May 18, 2007 [REDACTED] was expelled from practice before the EOIR, and therefore before CIS and this office. All representations will be considered, but the decision will be furnished only to the applicant.

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

On appeal, the applicant asserted that she had provided all of the documentation in her possession after the passage of so much time and had also provided affidavits from friends and relatives.

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 (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 since November 6, 1986. Section 245A(a)(3) of the Act, 8 U.S.C. § 1255a(a)(3). The regulations clarify that the applicant must have been physically present in the United States from November 6, 1986 until the date of filing the application. 8 C.F.R. § 245a.2(b)(1).

For purposes of establishing residence and physical presence 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.

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 period, 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 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.

With the application the applicant submitted no evidence pertinent to her residence in the United States during the requisite period. Therefore, in a Notice of Intent to Deny dated December 6, 2005 the director stated that the applicant had failed to submit evidence demonstrating her entry into the United States prior to January 1, 1982, and continuous residence during the requisite period.

In response the applicant submitted form declarations from [REDACTED], [REDACTED], and [REDACTED]. The applicant submitted no other evidence.

In their declarations, [REDACTED] and [REDACTED] claim to have met the applicant on June 13, 2000, during July 1998, on April 21, 1999, and on April 21, 1999, or approximately so, respectively. They do not indicate knowledge of the applicant's residence during the requisite period and are not, therefore, directly relevant to that issue.

However, this office notes that [REDACTED]'s form declaration states that she first met the applicant because "His wife work for me," "I met him at in my home for dinner," and "He is a good guy."

This office notes that the applicant is a woman. [REDACTED], however, is clearly under the impression that she is not. Reference to the photograph she provided with her Form I-687 application

demonstrates that there is no sexual ambiguity in her appearance. This office concludes that, notwithstanding _____ assertion to the contrary, they have never met.

_____'s form declaration states, "I am a frame contractor and he came to look for work in my company," and "He is good worker and we have good relation." [Errors in the original.] This office notes that this declarant is also under the misapprehension that the applicant is a man.

In her declaration, _____ stated, "Our relationship is very close and he is a good friend. He is a person I can depend on," and ". . . my mother in law was his [the applicant's] babysitter . . ."

_____ stated,

I met him while coming home, he was picking up his daughter from my mom. My mother introduced him to me and we hit it off. It also helped that our daughters were best-friends. We are best-friends and his is very dependable. I trust him very much and he treats me like a brother.

[Errors in the original.]

All of the declarations provided indicate that the declarants are under the misapprehension that the applicant is a man, and this office finds, therefore, that the applicant's declarant's have ever met her.

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).

In the decision of denial the director found that the evidence submitted did not demonstrate the applicant's residence in the United States during the requisite period. On appeal, the applicant indicated that she had no other evidence and implied that the evidence submitted should be sufficient, and submitted no additional evidence.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate entry into the United States prior to January 1, 1982, and continuous residence during the requisite period.

The evidence submitted does not even assert, let alone demonstrate, that the applicant resided in the United States during the requisite period. Even if it did, the four declarants have demonstrated that they have never, contrary to their assertions, met the applicant. Their declarations, for both reasons, cannot support the applicant's claim of continuous residence in the United States during the requisite

period. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis. The appeal will be dismissed.

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