



U.S. Citizenship
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FILE:



MSC-06-101-11633

Office: LOS ANGELES

Date:

AUG 20 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 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.

A handwritten signature in black ink, appearing to read "D. K. Wiemann".

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

The director denied the application because she found that the evidence submitted with the application was insufficient to establish eligibility for Temporary Resident Status pursuant to the terms of the CSS/Newman settlement agreements. The director cited discrepancies between the testimony provided by the applicant at her June 27, 2006 interview and testimony provided by the applicant in an August 1991 interview. Specifically, the applicant testified on June 27, 2006 that she first entered the United States in December of 1980. However, she testified previously that she first entered the United States in April of 1981. Based on these inconsistencies, the director found that the applicant failed to meet her burden of proof and show by a preponderance of the evidence that she had resided continuously in the United States throughout the requisite period.

On appeal, the applicant states that she first entered the United States in 1980. She explains that she was nervous and confused at her interview and, as a result, she provided an incorrect date of entry. The applicant has submitted three witness statements in support of her appeal.

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 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) 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. See 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).

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.* at 80. 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, 431 (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 for the duration of the requisite period. Here, the applicant has not met her burden of proof.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on January 9, 2006. The information contained in this Form I-687 application conflicts with information provided by the applicant in a Form I-687 application that the applicant submitted in 1991.

Part #30 of the Form I-687 application asked applicants to list all residences in the United States since first entry. On the instant Form I-687 application the applicant listed her address as follows:

- [REDACTED], Pomona, CA from 1981 until 1987
- [REDACTED] Pomona, CA from 1987 until 1989, and
- [REDACTED] Pomona, CA from 1989 until 1986.

However, on the Form I-687 application submitted by the applicant in 1991, she listed her address as [REDACTED] Pomona, CA from 1981 until 1986. This is a material inconsistency which detracts from the credibility of the applicant’s claim.

In addition, the applicant testified before an immigration officer on June 27, 2006 that she first entered the United States in December of 1980. In her appeal brief, the applicant again states that she first entered the United States in 1980. However, as noted by the director, the applicant testified before an immigration officer on August 23, 1991 that she first entered the United States in 1981. In addition, the record contains a “Form for Determination of Class Membership in *CSS v. Meese*” signed by the applicant on August 15, 1991 in which she claims to have first entered the United States in 1981. The applicant has failed to resolve these discrepancies.

The record contains the following statements and affidavits submitted by the applicant:

- Statement of [REDACTED] signed and dated July 21, 2006. The declarant states that he has known the applicant since 1981 and that he met her through her husband. The declarant does not claim to have personal knowledge of the applicant's residence during the requisite period. The declarant does not provide details regarding the frequency or nature of his contact with the applicant during the requisite period. Given these deficiencies, the statement has little probative value and will be given minimal weight as evidence of the applicant's residence in the United States during the requisite period.
- Statement of [REDACTED] M.D., signed and dated July 17, 2006. The declarant states that he has known the applicant since 1988. The declarant does not specify exactly when he first met the applicant, thus it is not clear that he was acquainted with the applicant during the requisite period. Further, the declarant fails to provide any detail regarding how he came to meet the applicant, how he dates his initial acquaintance with the applicant, or the nature and frequency of his contact with the applicant. Lacking such relevant detail, the statement can be afforded only minimal weight as evidence of the applicant's residence in the United States during the requisite period.

Statement of [REDACTED]. The statement is signed but it is not dated. The declarant states that she met the applicant at church in 1988. The declarant does not specify precisely when she first met the applicant, thus it is not clear that she was acquainted with the applicant during the requisite period. Further, the declaration lacks details of the declarant's relationship with the applicant such as how the affiant dates her initial acquaintance with the applicant or the nature and frequency of her contact with the applicant. This statement therefore has minimal weight as evidence of the applicant's residence in the United States during the requisite period.

- Statement of [REDACTED], with English translation. The declarant states that she met the applicant at the Sacred Heart of Jesus church in December of 1981. The declarant does not provide probative details such as how she dates her initial acquaintance with the applicant or the nature and frequency of her contact with the applicant. Lacking such details, this statement has minimal probative value and will be given little weight as evidence of the applicant's residence in the United States during the requisite period.
- Statement of [REDACTED], with English translation. The declarant states that she has known the applicant residing at [REDACTED] since June of 1982. The applicant does not have this address listed on her Form I-687 application. Given that the declarant listed an incorrect address for the applicant and failed to provide any other details of her relationship with the applicant, this statement will be given no weight as evidence of the applicant's residence in the United States during the requisite period.
- Affidavit of [REDACTED] signed and notarized on August 19, 2001. The affiant, the applicant's husband, states that he drove the applicant to the United States/Mexico border

on June 1, 1987 and that the applicant entered Mexico at that time. The affiant further states that he picked the applicant up on July 1, 1987. This coincides with information provided by the applicant on her Form I-687 application and at her interview. However, the affiant does not provide any information regarding the applicant's residence during the requisite period. At most, this affidavit provides evidence that the applicant was in the United States in 1987.

- Affidavits of [REDACTED] and [REDACTED]. These two affidavits are essentially identical. Both were signed and notarized on August 19, 1991. Both affiants state that they have known the applicant since 1981 and that they have been aware of the applicant's residence in the United States since that date. The affiants do not explain the basis of this knowledge, do not explain how or when they met the applicant, and do not explain the nature and frequency of their contact with the applicant. In light of these deficiencies these affidavits have little probative value and will be given minimal weight as evidence of the applicant's residence in the United States during the requisite period.
- Affidavit of [REDACTED] signed and notarized on August 19, 1991. The affiant claims to have knowledge that the applicant resided at [REDACTED] Pomona, CA 91766 from 1981 until "present." This conflicts with the information provided by the applicant on her Form I-687 application, where she listed her residence as [REDACTED] from 1981 until 1987. This affidavit, therefore, will be given little weight as evidence of the applicant's residence in the United States during the requisite period.

The applicant also submitted rent receipts with dates ranging from January 1981 to March 1988, as well as a receipt from the Southern California Gas Company dated November 10, 1987. These receipts bear the name of the applicant's husband [REDACTED]. The address listed on the receipts is [REDACTED] for the period January 1981 to April 1987. The receipts for later in 1987 and in 1988 also bear the name of the applicant's husband, and the address listed is [REDACTED]. The addresses listed on the rent receipts coincide with the information provided by the applicant on the instant Form I-687 application. However, the addresses conflict with the information provided by the applicant on the Form I-687 application submitted in 1991.

The record also contains copies of several envelopes addressed to the applicant. The postmarks on these envelopes are illegible, thus the envelopes will not be given any weight as evidence of the applicant's residence in the United States during the requisite period.

The record also contains a number of documents that fall outside the requisite period. These include copies of tax returns, money order receipts, rent receipts, utility bills, envelopes, school records, and medical records. As these documents fall outside the requisite period, they have no probative value and will be given no weight as evidence of the applicant's residence in the United States during the requisite period.

In summary, the applicant has not provided sufficient evidence in support of her claim of residence in the United States relating to the entire requisite period. The absence of sufficiently

detailed 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 information in the record and the applicant's reliance upon documents with little or no probative value, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States for the requisite period 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.