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FILE:



Office: NEWARK

Date:

DEC 11 2008

MSC 05 351 11856

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:



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 appeal was sustained or remanded for further action, you will be contacted.

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting 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, Newark. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant submitted a Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (Act), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet on September 16, 2005. Upon review, the director determined that insufficient evidence had been presented to establish eligibility under section 245A of the Act. On September 15, 2006, the director issued a notice of intent to deny (NOID) stating that the applicant had not established eligibility for temporary residence under section 245A of the Act. In response to the NOID on October 12, 2006, counsel submitted two letters and three affidavits to establish the applicant's presence in the United States prior to 1981 and continuing presence through the late 1980s. The director denied the application on January 25, 2007, finding that the applicant had not established by a preponderance of the evidence that she resided continuously in the United States in an unlawful status prior to January 1, 1982 and through the duration of the requisite period. Although the director determined that the applicant had not established that she was eligible for class membership pursuant to the CSS/Newman Settlement Agreements, the director treated the applicant as a class member in adjudicating the Form I-687 application on the basis of whether the applicant had established continuous residence in the United States for the requisite period. Consequently, the applicant has neither been prejudiced by nor suffered harm as a result of the director's finding that the applicant had not established that she was eligible for class membership. The adjudication of the applicant's appeal as it relates to her claim of continuous residence in the United States since prior to January 1, 1982 shall continue.

On appeal, counsel states that the applicant submitted numerous documents to show that she resided continuously in the United States before January 1, 1982 and through the requisite period. Counsel states that these documents should be considered in their entirety.

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 245(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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

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.* 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 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, 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.

At issue in this proceeding is whether the applicant submitted sufficient credible evidence to meet her burden of establishing that she (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. Here, the applicant has failed to meet this burden.

At part #30 of the Form I-687 application where the applicant was asked to list her places of residence in the United States she indicated that she resided in New Jersey from April 1981 to August 1989. She indicated at part #33 of her Form I-687 application that she was self-employed as a caterer from 1981 to 2001. The applicant does not indicate the city or state where she worked as a

caterer. The Form I-687 application at part #32 lists three absences from the United States for the applicant since her initial entry. From December 1982 to January 1983, she visited family in Trinidad; from June to August of 1985, she went to Trinidad to have her baby and from April to May of 1987, the applicant again visited family in Trinidad. The AAO notes that the applicant married in Trinidad on February 13, 1987, as stated on her G-325 submitted in support of the Form I-485 Life Act application.

In the applicant's class membership (LULAC) determination form, the applicant states that she first entered the United States as a B-2 (visitor for pleasure) at New York in April 1981.

In an attempt to establish entry into the United States before January 1, 1982 and continuous unlawful residence in the United States, counsel provided multiple documents that relate to the applicant's claim of continuous residence in the United States. On appeal, the AAO will consider only evidence that is relevant to the requisite period. In the instant case, those documents are the affidavits from [REDACTED] and [REDACTED] and letters from [REDACTED] and [REDACTED] and [REDACTED].

The affidavits from [REDACTED] and [REDACTED] state that they have known the applicant since 1981 and that she returned to Trinidad in June 1985 to have a child. [REDACTED] states in her affidavit that she has known the applicant since the late 1980s. In her affidavit, [REDACTED] states that she had the pleasure of meeting the applicant in the summer of 1987. [REDACTED] states that she knew the applicant when she was pregnant in 1985 in New Jersey. The affidavits confirm neither the applicant's statement that she entered the United States as a B-2 (visitor for pleasure) at New York in April 1981 nor her continuous residency in the United States. The affidavits fail to explain the circumstances surrounding their initial meeting with the applicant and how they developed and maintained a friendship over the requisite period. The affiants fail to specify the frequency with which they saw and communicated with the applicant during the requisite period. The affiants also fail to indicate any other details that would lend credence to their claimed acquaintance with the applicant and the applicant's residence in the United States during the requisite period. The affidavits fail to establish the applicant's continuous unlawful residence in the United States for the duration of the requisite period. To be considered probative and credible, witness affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from the claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Upon review, the AAO finds that, individually and together, the affidavits do not contain sufficient detail to establish their credibility. Therefore, the affidavits have nominal probative value.

In the letter, dated August 1, 2005 from [REDACTED], he states that the applicant first started preparing and serving Caribbean food when she came to Hillside, New Jersey in 1981. He states that he ordered food from the applicant every Friday of every month until October 1989. In the letter, [REDACTED] fails to explain the circumstances surrounding his meeting of the applicant and

where he was living during this time period. [REDACTED] claims to have known the applicant for the eight year period between 1981 and 1989 but fails to give the applicant's address and other events that happened over the eight year period that would lend credence to their claimed acquaintance. Considering these limitations, the letter will be given nominal weight.

[REDACTED] and [REDACTED] state in their letter dated March 20, 2003 that they met the applicant in 1985 when they all lived in Hillside, N.J. This affidavit contains sufficient knowledge about the applicant and her residence from 1985 however fails to attest to the applicant's entry into the United States in April 1981 and the applicant's continuous unlawful residence during the requisite period of 1981 to 1985. Therefore, this affidavit will be given nominal weight.

The applicant submits a letter dated August 1, 2005 signed by [REDACTED] Pastoral Associate of the St. Antoninus Church. He states in his letter that the applicant was actively participating in church activities prior to his arrival in 1987. He also states that in 1988, the applicant was assigned as the coordinator of their Youth Leadership program that he supervised. The reverend states that in 1989, the applicant left the parish for Florida. While outside of the requisite period, the applicant does not list any associations with churches or other organizations in Florida in 1989. The letter does not attest to the applicant's entry in April 1981 and the applicant's continuous unlawful presence from April 1981 through the requisite period.

Further, the regulation at 8 C.F.R. § 245a.2(d)(3)(v) provides requirements for attestations made on behalf of an applicant by churches, unions, or other organizations. Attestations must (1) Identify applicant by name; (2) be signed by an official (whose title is shown); (3) show inclusive dates of membership; (4) state the address where applicant resided during membership period; (5) include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; (6) establish how the author knows the applicant; and (7) establish the origin of the information being attested to. The aforementioned letter does not meet these requirements.

An applicant shall be regarded as having resided continuously in the United States if, at the time of filing of the application for temporary resident status no single absence from the United States has exceeded 45 days between January 1, 1982 through the date the application for temporary resident status is filed, unless the applicant can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed. 8 C.F.R. § 245a.1(c)(1)(i).

The evidence of record establishes that the applicant traveled to Trinidad in June 1985 to give birth to her son. Form I-687 application states that her son, [REDACTED] was born in Trinidad on July 11, 1985. Her Life Act I-485 application states that her son was born in Trinidad on August 11, 1985. At the I-687 interview conducted on September 6, 2006, the applicant stated that she returned to the United States four days after her son was born on August 15, 1985. In a letter dated July 20, 2005 signed by the applicant, the applicant lists her absences from the United States as December 1982 to January 1983, June 1985 to August 1985 and April 1987 to May 1987. The AAO finds that

if the applicant returned to Trinidad on June 30, 1985 and reentered the United States on August 15, 1985, the applicant's absence from the United States exceeded 45 days.

Further, the applicant's class membership (CSS/LULAC) determination form indicates her last departure from the United States was in April 1987, returning in May 1987. However, her Form G-325 indicates the applicant was married in Trinidad on February 13, 1987. Her I-94 Departure Record indicates that the applicant re-entered the United States as a B-2 (visitor for pleasure) nonimmigrant on May 3, 1987. Her absence from the United States from February-May 1987 exceeded 45 days. There is no evidence that an emergent reason prevented the applicant from returning to the United States in 1985 or 1987, and therefore, the applicant has not resided continuously in the United States as that term is used in section 245A(a)(2) of the Act.

In the instant case, the applicant has failed to submit sufficient evidence to overcome the director's denial. The evidence of the two exits from the United States, each more than 45 days, calls into question the credibility of the applicant's claim of continuous unlawful residence in the United States throughout the requisite period. The evidence submitted is insufficient to establish the applicant's 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 requisite period.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that she entered the United States before January 1, 1982 and continuously resided in an unlawful status in the United States for the requisite period 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.