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FILE:



Office: NATIONAL BENEFITS CENTER

Date:

**DEC 11 2008**

MSC 05 249 10609

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.

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, National Benefits Center. 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 June 6, 2005. The applicant's interview regarding Form I-687 was conducted on October 17, 2005 and on the same date, the Director, of the Boise Sub-Office, issued a request for evidence (RFE). The RFE directed the applicant to furnish evidence of her entry into the United States before January 1, 1982 and residence throughout the requisite period. In response to the RFE, on January 16, 2006, counsel provided multiple documents that related to the applicant's parents [REDACTED] and [REDACTED]. Counsel stated that the applicant was a child at the time of entry into the United States. Upon review, the director determined that insufficient evidence had been presented to establish eligibility under section 245A of the Act. On January 23, 2006, the director issued a notice of intent to deny (NOID) stating that the applicant had not established by a preponderance of the evidence that she had entered the United States prior to January 1, 1982 and thereafter resided continuously in the United States for the duration of the requisite period. The director also determined that the applicant had not established that she was continuously physically present in the United States for the requisite period. In response to the NOID, on February 23, 2006, counsel in addition to his letter submitted a copy of an envelope addressed to the applicant's father and an affidavit. The director denied the application on March 2, 2006<sup>1</sup>, finding that the applicant had not established by a preponderance of the evidence eligibility for temporary resident status pursuant to Section 245A of the Act.

An appeal was filed but on October 3, 2006, the Director, National Benefits Center, rejected the appeal as being filed untimely. In a motion to reopen filed November 1, 2006, counsel submitted evidence to prove the appeal was filed timely on March 22, 2006. On April 24, 2007, the director, National Benefits Center, withdrew its decision and reopened the proceeding for the continued processing of the appeal. The appeal is now before the AAO.

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

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<sup>1</sup> The director initially denied the applicant's I-687 application on February 24, 2006 for failure of the applicant to respond to the NOID. However, the applicant through counsel had responded timely to the NOID and therefore the director issued a subsequent decision on March 2, 2006.

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 (2) has

continuously resided in the United States in an unlawful status for the requisite period of time and (3) has continuous physical presence in the United States from November 6, 1986 through the requisite period. Here, the applicant has failed to meet this burden.

The applicant's Form I-687 at part #16 indicates that the applicant's last entry into the United States was in February 1992. 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 California from July 1981 to June 1987. The applicant has not indicated on Form I-687 where she resided from June 1987 to September 1992. She indicated at part #33 of her Form I-687 application that she worked for farm labor contractor (FLC)<sup>2</sup> in California as a laborer from July 1981 to May . No other employment is listed on her Form I-687 until May 1993 when the applicant worked for [REDACTED]. The Form I-687 application at part #32 lists no absences from the United States for the applicant since her initial entry.

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 and related to the applicant.

In a sworn affidavit dated February 1, 2006 signed by [REDACTED], the affiant states that his association with the applicant's family began in 1986. The affiant states that the applicant was employed by him as an untrained caregiver for his wife until his wife's death in the year 2000 but he fails to specify when the applicant started working for him. This affidavit neither confirms the applicant's residency in the United States from July 1981 to 1986 nor entry into the United States prior to January 1, 1982. Therefore, it can be afforded only nominal weight in establishing the applicant's residency in the United States during the requisite period.

The sworn affidavits from [REDACTED] and [REDACTED] attest to the applicant's father's residency in the United States and not the applicant's residency. The applicant's father rented from the affiant, [REDACTED], a trailer located at [REDACTED] from March 1982 to January 1985 and from [REDACTED], he rented a house located at [REDACTED] Jerome, Idaho, from February 1985 to December 1998. From March 1982 through December 1998, the applicant has not established that she resided with her father in the United States. The applicant's Form I-687 shows that she resided at [REDACTED], Calexico, California from July 1981 to June 1987. As previously stated, the applicant has not indicated on Form I-687 where she resided from June 1987 to September 1992. Therefore, the applicant's father's residency is irrelevant in this proceeding.

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<sup>2</sup> The AAO notes that the employment information may relate to the applicant's mother as it is noted (Husband lived here) next to the employer's name and further, in July 1981, the applicant was 13 years old.

The applicant submitted an entrance ticket receipt from Disneyland dated April 22, 1981. However, there is no evidence in the record that confirms the applicant purchased the entrance ticket.

The March and July 1982 rent receipts submitted as evidence are in the name of the applicant's father, [REDACTED]. One of the receipts has no address and the other shows the address as [REDACTED]. Other rent receipts for February 1<sup>st</sup> to March 1<sup>st</sup> of 1985 and September 1<sup>st</sup> to October 1<sup>st</sup> of 1986 in the name of the applicant's father have the address as [REDACTED]. The applicant does not have either address listed on her Form I-687 as a prior place of residence. Therefore, this evidence is not relevant in this proceeding.

In a letter from Sun Valley Harvest, Inc. signed by the president, [REDACTED] the letter states that the applicant, [REDACTED], worked for this company as a farm laborer harvesting produce from 1981 to 1987. Although the employment is listed on the applicant's Form I-687, the applicant was born on May 6, 1968 making her either 12 or 13 years old when she was employed by Sun Valley Harvest, Inc. Further, the block in part #33 listing the full name of the employer is also noted "Husband lived here" making it unlikely that the employment refers to the applicant. Moreover, the employment letter submitted does not conform fully with the regulation at 8 C.F.R. § 245a.2(d)(3)(i) which states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and, identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable. As the statement does not meet the requirements stipulated in the aforementioned regulation, it will be given nominal weight.

The applicant has provided a copy of a receipt dated February 15, 1982 with the name [REDACTED] handwritten on it, correspondence from MCI and copies of envelopes. A copy of a letter in Spanish dated October 3, 1984 and a birthday card with 1986 handwritten at the bottom of the card are also contained in the record. However, the correspondence and the envelopes are not addressed to the applicant but either to her mother or father and the AAO is unable to determine for whom the letter and birthday card were intended. Therefore, this evidence cannot be considered in this proceeding.

In the instant case, the applicant has failed to submit sufficient evidence to overcome the director's denial. The lack of evidence 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. The applicant has not submitted sufficient evidence to establish she has continuous physical presence in the United States from November 6, 1986 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 has not submitted sufficient evidence to establish that she has continuous physical presence in the United States from November 6, 1986 through the requisite period. 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.