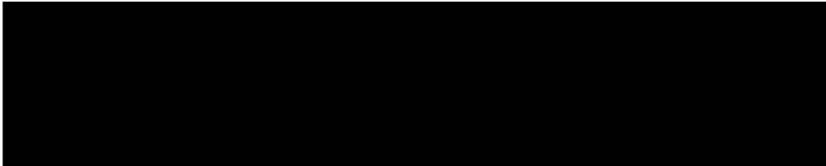


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Services

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FILE:



Office: LOS ANGELES

Date:

DEC 19 2008

MSC 06 013 12530

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

A handwritten signature in black ink, appearing to read "R. 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 Director, Los Angeles. 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 October 13, 2005. Upon review, the director determined that insufficient evidence has been presented to establish eligibility under section 245A of the Act. On November 17, 2005, 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. Specifically, the applicant had failed to provide sufficient evidence to establish that she first entered the United States before January 1, 1982 and thereafter resided continuously in the United States in an unlawful status 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 and admissible as an immigrant. The applicant was granted 30 days from the date of the notice to submit additional evidence in response to the NOID. In response, the applicant submitted three affidavits and her 2003 individual income tax return. The director denied the application, finding that the applicant had not provided credible evidence to establish that she had continuous presence in the United States in an unlawful status since prior to January 1, 1982 and for the duration of the requisite period.

On appeal, the applicant states that the discrepancy between the dates on her application compared with the documents submitted could be humanely considered. The applicant states that she has provided all the documents requested by the interviewing officer.

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 California since 1979. She does not list at part #33 of her Form I-687 application any employment during the requisite period. At part #32, she listed one absence from the United States during the requisite period since her initial entry from February 1985 to March 1985.

In an interview conducted on January 8, 2007, the applicant stated that she first entered the United States in March 1979. She also stated that she departed the United States on two occasions; one

departure was from February 1, 1985 to March 1985. The other departure was from January 2, 1997 through September 2001 and she returned on a visa.

The record contains a sworn affidavit from [REDACTED]

In her affidavit, [REDACTED] states that she has personal knowledge of the applicant residing in Whittier, California from March 1979 to December 1982 but the applicant's Form I-687 indicates that she resided in Panorama City, California from 1979 to 1982. The affiant states that her relationship to the applicant is that of a friend and landlady but fails to specify how she met the applicant. The affiant fails to specify the frequency with which she saw and communicated with the applicant during the requisite period. The affiant fails to explain how she gained the personal knowledge of the applicant's continuous presence in the United States throughout the requisite period. The affidavit does not include sufficient detailed information about the claimed relationship and the applicant's unlawful entry in March 1979 and continuous residency in the United States throughout the requisite period. The affiant also fails to indicate any other details that would lend credence to her claimed acquaintance with the applicant and the applicant's residence in the United States during 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 a 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 the affidavit does not contain sufficient detail to establish the reliability of its assertions. The applicant on appeal did not refute any of the director's concerns regarding the lack of evidence provided to prove her entry prior to January 1, 1982 and her continuous residency in an unlawful status throughout the requisite period. The affidavit, while providing some evidence of the applicant's presence in the United States, 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 evidence of record establishes that the applicant was married in the Philippines on November 25, 1984 and gave birth to her son in the Philippines on April 20, 1986. The applicant's Form I-687 does not list either one of these departures but indicates the applicant left the United States from February 1985 to March 1985, March 2000 to April 2000 and August 2001 to September 2001. Her I-94 Departure Record indicates that the applicant re-entered the United States as a B-2 (visitor for pleasure) nonimmigrant on September 22, 2001.

In her interview conducted January 8, 2007, the applicant states she departed the United States two times. The only departure during the requisite period was from February 1, 1985 to March 1985. The applicant also states that she got married in the Philippines in November 1984 and had two children, born April 28, 1986 and July 1995 in the Philippines. These dates are inconsistent with her testimony regarding her absences. No explanation is provided regarding the contradictions other than the dates could be humanely considered. However, there is no provision in the regulations or statute for

consideration of temporary residence status under section 245A for humanitarian grounds. The contradictions are material to the applicant's claim in that they have a direct bearing on the applicant's entry into and residence in the United States during the requisite period. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. 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. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In the instant case, the applicant has failed to submit sufficient evidence to overcome the director's denial. The 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.

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.