



U.S. Citizenship  
and Immigration  
Services

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LI

[REDACTED]

FILE: [REDACTED]  
MSC-05-243-11547

Office: LOS ANGELES

Date: JAN 25 2008

IN RE: Applicant: [REDACTED]

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.

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 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. The director determined that the applicant had not established by a preponderance of the evidence that she had continuously resided in the United States in an unlawful status for the duration of the requisite period. The director denied the application, finding that the applicant had not met her burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, the applicant asserted that she had submitted sufficient evidence to establish her residence in the United States during the requisite period, stated that the declarations she provide were verifiable, and asked that her case be reconsidered. The applicant submitted copies of documents she had already submitted, together with additional documents that do not relate to the requisite period.

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)(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).

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.

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 submitted evidence is not relevant, probative, and credible.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on May 31, 2005. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant listed the following addresses during the requisite period: Riverside, California, 1979; [REDACTED] Plascencia, California from 1985 to 1987; and [REDACTED] Los Angeles, California from 1987 to 1989. The applicant’s failure to list address information for the period from 1980 to 1985 calls into question the applicant’s claim to have resided in the United States throughout the requisite period. At part #33 where applicants were asked to list all employment since entry, the applicant listed the following positions during the requisite period: Naturipe Berry Growers during 1986; Ford Manufacturing Co. during 1986; Art Deco West Inc. during 1986; U.S. Finishing from August 1987 to October 1987; and Electronic Bear during 1988.

The applicant provided an additional list of addresses in support of her application. The applicant listed the following addresses during the requisite period: [REDACTED] Santa Fe Vista, from 1979 to 1980; [REDACTED] a, from 1981 to 1985; [REDACTED] Placentia, from 1986 to 1987; 1125 E. 24 St., LAC, 1988; and [REDACTED] LAC from 1988 to 1991. This information is inconsistent with the information listed on the applicant's Form I-687 application where the applicant indicated she lived on [REDACTED] from 1985 to 1987, as opposed to on [REDACTED] from 1986 to 1987 as indicated on the separate list of addresses. It is also inconsistent with the applicant's Form I-687, where the form states that the applicant lived on [REDACTED] in Los Angeles from 1987 to 1989, as opposed to [REDACTED] in Los Angeles from 1988 to 1991 as indicated on the list of addresses. These inconsistencies call into question whether the applicant actually resided in the United States throughout the requisite period.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided voluminous documentation. Documents relating to the requisite period include multiple attestations, birth certificates for the applicant's children, a certified mail receipt, and the applicant's Form W-2.

The applicant provided a form declaration from [REDACTED] [REDACTED] stated that he personally knows the applicant, and he knows from personal knowledge that the applicant has been physically present in the United States in Vista, California from October 1979 to December 1980. [REDACTED] stated that the applicant lived with him and was working for Flamingo Nursery during this time. This declaration is inconsistent with the information provided on the applicant's Form I-687 application, which fails to indicate the applicant was employed during 1979 or 1980. This inconsistency calls into question [REDACTED] ability to confirm that the applicant resided in the United States prior to January 1, 1982.

The applicant submitted an affidavit from [REDACTED] and [REDACTED]. In this affidavit, the affiants stated that they have known the applicant since 1980 and they "resided at the same house [at] [REDACTED], Vista, California from 1980 to 1982." The affiants also stated that they have personal knowledge that the applicant has continuously resided in the United States since 1980. This affidavit is inconsistent with the information provided in the applicant's Form I-687 application, where the applicant indicated that she was living at [REDACTED] Santa Fe [REDACTED] from 1979 to 1980 rather than from 1980 to 1982 as indicated in the affidavit from Mr. and [REDACTED]. This inconsistency calls into question the affiants' ability to confirm the applicant resided in the United States throughout the requisite period.

The affidavit from [REDACTED] states that the applicant resided with the affiant and her family at [REDACTED] in Vista, California from about February 1981 through December 1985. This is inconsistent with the information provided by [REDACTED] in their affidavit, which indicates that the applicant resided with them at [REDACTED] from 1980 to 1982, rather than at [REDACTED] with [REDACTED] and her family. [REDACTED]'s affidavit also states that the applicant was employed by her as a babysitter and housekeeper, working at least five days per week. This is also inconsistent with

the information provided on Form I-687, where the applicant failed to list her position as babysitter and housekeeper when asked to list all employment in the United States. These inconsistencies call into question whether the applicant actually resided in the United States during the requisite period.

The applicant submitted a letter from [REDACTED]. This letter is unsigned. As a result, it carries only minimal evidentiary weight. The letter states that the applicant worked for Mr. [REDACTED] at Fiamengo Nursery during 1979 and 1980. The letter also states that, to the best of Mr. [REDACTED] knowledge, the applicant has been a resident in California since that time. This letter is inconsistent with the information provided on the applicant's Form I-687, where the applicant failed to list her position with Fiamengo Nursery when asked to list all employment in the United States. This inconsistency calls into question whether the applicant actually resided in the United States prior to January 1, 1982. In addition, the letter does not conform to regulatory standards for letters from employers as stated in 8 C.F.R. § 245a.2(d)(3)(i). Specifically, the declaration does not include the applicant's address at the time of employment, duties with the company, whether or not the information was taken from official company records, where the records are located, and whether the service may have access to the records.

The applicant also provided a declaration from [REDACTED]. This declaration states that the applicant was employed by Fiamengo Nursery from 1979 through 1980. This declaration is also inconsistent with the information provided on the applicant's Form I-687, where the applicant failed to list her position with Fiamengo Nursery when asked to list all employment in the United States. This inconsistency calls into question whether the applicant actually resided in the United States prior to January 1, 1982. In addition, the letter does not conform to regulatory standards for letters from employers as stated in 8 C.F.R. § 245a.2(d)(3)(i). Specifically, the declaration does not include the applicant's address at the time of employment, duties with the company, whether or not the information was taken from official company records, where the records are located, and whether the service may have access to the records.

In addition to affidavits and declarations, the applicant also provided contemporaneous evidence to demonstrate her residence during the requisite period. She provided birth documentation for three of her children, born in the United States on December 20, 1986; November 6, 1987; and October 7, 1989. The applicant also provided a certified mail receipt from October 1986, which lists her name and address. The applicant submitted a pay stub from U.S. Finishing Co., Inc. from the period of August 3, 1987 to August 9, 1987, listing her name, which is consistent with the information provided on her Form I-687 application. Lastly, the applicant provided a Form W-2 from 1986 listing her name. This evidence all tends to indicate the applicant resided in the United States from October 1986 through October 1989.

In denying the application the director noted that the applicant had not established by a preponderance of the evidence that she had continuously resided in the United States in an unlawful status for the duration of the requisite period.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the first portion of the requisite period, from prior to January 1, 1982 until October 1986. The applicant has submitted affidavits and declarations that are inconsistent with each other and with the information provided on her Form I-687, are unsigned, or do not conform to regulatory standards.

The declaration from [REDACTED] and the declaration from [REDACTED] and [REDACTED] are inconsistent with the information provided on the applicant's Form I-687 application. The affidavit from [REDACTED] is inconsistent with the affidavit from [REDACTED] and with the information provided in the applicant's Form I-687 application. The letter from [REDACTED] is unsigned, is inconsistent with the applicant's Form I-687, and does not conform to regulatory standards. The declaration from [REDACTED] is inconsistent with the applicant's Form I-687 and does not conform to regulatory standards.

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 contradictions between the applicant's statements on her application and the information provided in the documents she submitted, and given her reliance upon documents with minimal probative value to demonstrate that she resided in the United States from before January 1, 1982 until October 1986, 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.