



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

L1

[REDACTED]

FILE:

[REDACTED]

Office: LOS ANGELES

Date: JUL 15 2008

MSC-06-089-11887

IN RE:

Applicant:

[REDACTED]

APPLICATION:

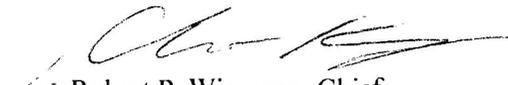
Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. 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.


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 asked for fair consideration of her evidence and stated that the information provided by the declarations the applicant submitted should have been sufficient to demonstrate her eligibility for temporary resident status.

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).

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. 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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet her burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on December 28, 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 failed to list any addresses during the requisite period and indicated that additional information would be provided at the interview. At part #32 where applicants were asked to list all absences from the United States since entry, the applicant listed only a trip to Mexico for an emergency from March 15, 2005 to April 5, 2005. At part #33 where applicants were asked to list all employment in the United States since entry, the applicant listed the following positions: Self-employed babysitter/housekeeper in Lake Elsinore, California from January 1981 to November 2002; and work for 642 Norman Industries, Inc. in North Hollywood, California from February 1986 to February 1987.

The record indicates that the applicant was interviewed in connection with her application for permanent resident status on August 24, 1992. The record of the interview indicates that the applicant stated that she went to Mexico in April 1987 to give birth and was there for two to

three months. The applicant submitted an appeal of the denial of her application for permanent resident status, dated August 25, 2004. The applicant admitted that she was gone in excess of 45 days on two departures, but stated that it was for “emergent reasons.” She stated that she returned to Mexico in 1983 and 1987 to give birth because she could not afford health care for the birth of her children. On her Form I-485 Application to Register Permanent Residence or Adjust Status, the applicant indicated that she gave birth to children in Mexico on October 17, 1983 and on March 31, 1987.

According to 8 C.F.R. § 245a.2(h)(1)(i), an applicant for temporary resident status shall be regarded as having resided continuously in the United States if, at the time of filing of the application, no single absence from the United States has exceeded 45 days, and the aggregate of all absences has not exceeded 180 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. The applicant indicated in her interview with an immigration officer that she was in Mexico in 1987 for a period of two to three months. Therefore, this trip must have exceeded 45 days. The applicant admitted in her appeal dated August 25, 2004 that both of her trips to Mexico, in 1983 and 1987, resulted in an aggregate total absence of approximately 130 days. A determination must be made as to whether the applicant has established that her failure to accomplish her return within the time period allowed was due to emergent reasons.

The applicant indicated, as stated above, that she returned to Mexico in 1987 to give birth because she could not afford health care for the birth of her children. Although the regulations do not define the term “emergent reason”, *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988) holds that “emergent” means “coming unexpectedly into being.” As indicated above, an absence of more than 45 days must be “due to emergent reasons” significant enough that the applicant’s return “could not be accomplished within the time period allowed.” 8 C.F.R. § 245a.2(h)(1)(i). Therefore, in order to qualify for an exception to the requirement that an individual absence not exceed 45 days, the reasons must be unexpected at the time of departure from the United States and of sufficient magnitude that they made the applicant’s return to the United States more than inconvenient, but virtually impossible. That was not the applicant’s situation in this case. The applicant stated that she left the United States for the express purpose of giving birth in Mexico. The delay in the applicant’s return was not due to any “emergent reason” – *i.e.*, one that was unforeseen at the time of her departure – because the birth of her child was the specific reason for her absence from the United States. The applicant’s continued stay in Mexico after the birth of her child appears to have been a matter of personal choice, not a situation that was forced upon her by unexpected events. Therefore, the applicant has not established that her failure to accomplish her return from an absence from the United States exceeding the 45 days allowed by 8 C.F.R. § 245a.2(h)(1)(i) was “due to emergent reasons.” As a result, the applicant is found not to have resided continuously in the United States throughout the requisite period.

In an attempt to establish continuous unlawful residence during the requisite period, the applicant provided several attestations. The declaration from [REDACTED] states that the

declarant has known the applicant since April 1981 in Lake Elsinore, California. The declarant stated that she met the applicant when the applicant cleaned houses. At that time, the declarant started to let the applicant clean her house. After a time, the declarant rented the applicant an apartment. This declaration fails to specifically confirm that the applicant resided in the United States during the requisite period except during April 1981. The declaration fails to include detail regarding where the applicant resided throughout the requisite period, the declarant's frequency of contact with the applicant, and information regarding the applicant's absences from the United States during the requisite period. Therefore, this declaration is found to lack sufficient detail to confirm that the applicant resided in the United States during the requisite period.

The applicant submitted a declaration dated April 27, 2004 from [REDACTED]. The declarant stated that he met the applicant in May 1981, when she lived in Lake Elsinore, California. The declarant stated that he and the applicant were neighbors for "a long time." This declaration fails to specifically confirm that the applicant resided in the United States during the requisite period except during May 1981. The declaration fails to include detail regarding where the applicant resided throughout the requisite period, the declarant's frequency of contact with the applicant, and information regarding the applicant's absences from the United States during the requisite period. Therefore, this declaration is found to lack sufficient detail to confirm that the applicant resided in the United States during the requisite period.

The applicant submitted a notarized declaration from [REDACTED] which states that the applicant worked for the declarant as a housekeeper from December 5, 1981 to August 1985. This declaration fails to provide detail regarding where the applicant worked for the affiant and resided during the requisite period, their frequency of contact, how the applicant came to be working for the declarant, and whether the applicant was absent from the United States during the requisite period. Therefore, this declaration is found to lack sufficient detail to confirm that the applicant resided in the United States during the requisite period.

The applicant provided a form affidavit dated May 22, 1990 from an individual named Pedro whose last name is illegible. The affiant stated that he has first hand knowledge of the applicant since 1985 and has been aware of her continuous residency in the United States since that date. This affidavit fails to include detail regarding how and when the affiant met the applicant, their frequency of contact, and the region where the applicant resided in the United States. Therefore, this declaration is found to lack sufficient detail to confirm that the applicant resided in the United States during the requisite period.

The applicant submitted a form affidavit from [REDACTED], dated March 20, 2002 which states that, to the affiant's personal knowledge, the applicant has resided in the United States as follows: [REDACTED] Lake Elsinore, from January 1982 to present. The affiant stated that she is able to determine the date of the beginning of her acquaintance with the applicant in the United States because the applicant used to rent from the affiant and now works for her, doing house cleaning at her home. This affidavit fails to provide detail regarding where and when the affiant met the applicant, their frequency of contact during the requisite period, and whether the applicant was

absent from the United States during the requisite period. As a result, this declaration is found to lack sufficient detail to confirm that the applicant resided in the United States during the requisite period.

The applicant submitted a form affidavit from [REDACTED] dated March 20, 2002, which states that, to the affiant's personal knowledge, the applicant has resided in the United States as follows: [REDACTED], Lake Elsinore, from April 1981 to present. The affiant stated that she is able to determine the date of the beginning of her acquaintance with the applicant in the United States from "cleaning her house." This information appears inconsistent with the applicant's Form I-687, where the applicant indicated she worked as a housekeeper throughout the requisite period. In addition, the affidavit fails to provide detail regarding where and when the affiant met the applicant, their frequency of contact during the requisite period, and whether the applicant was absent from the United States during the requisite period. As a result of its lack of detail and apparent inconsistency with the applicant's Form I-687, this declaration will be given very little weight.

The applicant submitted a form affidavit from [REDACTED], dated June 14, 1990, which states that the affiant has first-hand knowledge of the applicant from 1981 to present, and that he has been aware of her continuous residency in the United States since this date. This affidavit fails to include detail regarding how and when the affiant met the applicant, their frequency of contact, and the region where the applicant resided in the United States. Therefore, this declaration is found to lack sufficient detail to confirm that the applicant resided in the United States during the requisite period.

The applicant provided a form affidavit from [REDACTED] dated June 21, 1990, which states that the affiant has first-hand knowledge of the applicant from 1982 to present, and that she has been aware of the applicant's continuous residency in the United States since this date. This affidavit fails to include detail regarding how and when the affiant met the applicant, their frequency of contact, and the region where the applicant resided in the United States. Therefore, this declaration is found to lack sufficient detail to confirm that the applicant resided in the United States during the requisite period.

The applicant submitted a form affidavit from [REDACTED], dated June 19, 1990, which states that the affiant has first-hand knowledge of the applicant from 1986 to present, and that she has been aware of the applicant's continuous residency in the United States since this date. This affidavit fails to include detail regarding how and when the affiant met the applicant, their frequency of contact, and the region where the applicant resided in the United States. Therefore, this declaration is found to lack sufficient detail to confirm that the applicant resided in the United States during the requisite period.

The applicant provided pay stubs for employment with 642 Norman Industries, Inc. in North Hollywood, California listing the applicant as the employee, from November 20, 1986 to January 28, 1987. These documents tend to show that the applicant resided in the United States from November 1986 to January 1987.

In denying the application the director concluded 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.

On appeal, the applicant asked for fair consideration of her evidence and stated that the information provided by the declarations the applicant submitted should have been sufficient to demonstrate her eligibility for temporary resident status

In summary, the applicant has submitted evidence indicating that she resided in the United States from November 1986 to January 1987. She has also submitted several attestations relating to her residence during the requisite period. Each of the attestations lacks sufficient detail to confirm that the applicant resided in the United States during the requisite period. The applicant also indicated that she was absent from the United States for at least one visit that exceeded 45 days and she failed to establish that her delayed return was "due to emergent reasons." 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 applicant's reliance upon documents with minimal probative value, and given her failure to establish that her delayed return from an extended absence from the United States was "due to emergent reasons," 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