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U.S. Citizenship
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FILE:

MSC 06 080 13300

Office: LOS ANGELES

Date:

JUN 09 2008

IN RE:

Applicant:

APPLICATION:

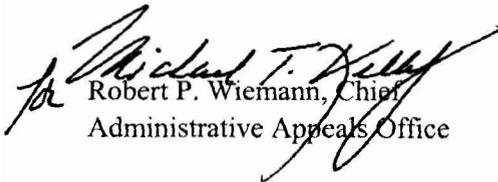
Application for Status as a Temporary Resident pursuant to Section 245A of the
Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. 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 director denied the application because the applicant did not establish that she continuously resided in the United States for the duration of the requisite period.

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 December 9, 2005. The applicant was interviewed on October 4, 2006 in connection with her Form I-687. The applicant provided translations and a medical report in response to the interviewing officer's request for further information. On October 16, 2006 the director denied the application.

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 applicant attempted to file the application. 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 or attempting to file the application. 8 C.F.R. § 245a.2(b)(1).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "until the date of filing" shall mean 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 periods, 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.* 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. See 8 C.F.R. § 245a.2(d)(6).

Even if the director has some doubt as to the truth, if the applicant 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 (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 establish her entry into the United States prior to January 1, 1982 and continuous unlawful residence since such date through the date she attempted to file the application.

On the Form I-687, the applicant indicated she had last entered the United States on April 2, 2001. The applicant indicated she lived at [REDACTED] in Calexico, California from August 1981 to August 1987 and at [REDACTED] in Mira Loma, California from June 2001 to the date of filing the application. The applicant listed her employment as a farm laborer with [REDACTED] Labor Contractor from August 1981 to July 1987 and her next employment in the United States beginning in May 2001. The applicant did not list any absences from the United States.

The record contains birth certificates and their translations for the applicant's three children. The birth certificates show the applicant's children were born in El Salvador on May 3, 1981, June 22, 1982, and November 19, 1983. The record also contains the applicant's authorization for an individual to act as her interpreter at the applicant's October 4, 2006 interview as well as the applicant's sworn statement written in Spanish. The record further contains a February 15, 2005 letter written by [REDACTED] General Manager for [REDACTED] Farm Labor Contractor certifying that the applicant worked as a farm laborer for the seasons from January 1982 to April 1986. The general manager notes that the farm laborers were paid in cash and that the company did not have proper employment records and had closed its operation in September 1987.

The director denied the application on October 16, 2006. The director observed that the applicant at her October 6, 2006 interview while under oath stated that she first entered the United States in May 1982; that she worked in the fields in Borego Spring harvesting broccoli and lettuce from December 1982 to April 1986; that both in writing and verbally she stated that she had left the United States once in 1990 to get married; and that she had never applied for amnesty. The director also noted the birth of the

applicant's children in June 1982 and in November 1983 and concluded that the applicant was more likely than not residing in El Salvador during the requisite period. The director determined that the applicant had not established continuous residence in the United States in an unlawful status from prior to January 1, 1982 to May 4, 1988.

On appeal, the applicant asserted that her interpreter did not speak English fluently; that she entered the United States in August 1981 and worked seasonally with [REDACTED] from August 1981 to August 1987; that she returned to El Salvador in May 1982 for the birth of her son and that she returned to the United States when her son was three months old; and that she returned to El Salvador in October 1983 to give birth to her third child and returned to the United States when the child was four months old. The applicant adds that from August 1987 to June 2001 she worked cleaning houses in Orange County, California.

The letter submitted by the general manager of [REDACTED] indicates that the applicant was a seasonal worker from January 1982 to April 1986. The letter writer does not indicate that the applicant's work was continuous and does not include any periods of layoff as required of documentation submitted to establish residence through evidence of past employment. *See* 8 C.F.R. § 245a.2(d)(3)(i). This letter does not establish that the applicant's residence in the United States was continuous and is not considered probative.

The applicant's statement on appeal and her sworn statement comprise the only documentation of the applicant's claimed entrance into the United States and her residence in the United States from prior to January 1, 1982 through the requisite time period. These statements are inconsistent and have not been resolved.¹ The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period detracts from the credibility of her 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 inconsistencies in the record and the lack of credible supporting documentation, it is concluded that the applicant has failed to meet her burden of proof and failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the date she attempted to file a Form I-687 application, 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. The appeal will be dismissed.

¹ Moreover, the applicant's statement on appeal that she remained outside of the United States for more than 45 days on two different trips breaks her claim of continuous unlawful residence. Continuous unlawful residence is broken if absent from U.S. more than 45 days on any one trip and 180 days total since 1-1-82 unless return could not be accomplished due to emergent reasons. *See* 8 C.F.R. § 245a.2(h)(1)(i). Emergent reasons defined as "coming unexpectedly into being." *Matter of C*, 19 I&N Dec. 808 (Comm. 1988).

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.