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FILE:

MSC 05 239 14388

Office: LOS ANGELES

Date: **MAR 31 2008**

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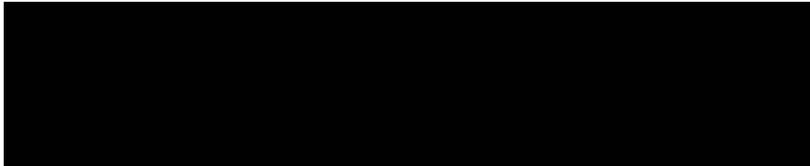
Applicant:



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. 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
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, on May 27, 2005. The applicant was interviewed on December 6, 2005. On that day, the director issued a Form I-72 requesting proof of the applicant's affiants' residences in the United States before 1982 and their phone numbers as well as a translated copy of the applicant's marriage certificate. The applicant responded to the director's request. The director ultimately denied the application because the affiants contacted did not confirm the information provided in their affidavits. On appeal, the applicant states her belief that she is eligible to apply for this benefit and reiterates that she entered the United States before January 1, 1982 and resided in a continuous unlawful status, except for brief absences, from before 1982 to the date she was turned away for filing the application. The applicant also resubmits the six affidavits previously provided.

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. 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). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The credibility of an affidavit may be assessed by taking into account such factors as whether the affiant provided a copy of a recognized identity card, such as a driver's license; whether the affiant provided some proof that he or she was present in the United States during the requisite period; and whether the affiant provided a valid telephone number. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

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.

An applicant for temporary residence under the CSS/Newman Settlement Agreements need only 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 have been physically present in the United States from November 6, 1986 until the date of filing the application as defined above.

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 listed her name as [REDACTED] and indicated that she also used the name [REDACTED], her married name. The applicant's marriage certificate indicates she was married in Mexico in November 1979. The applicant initially submitted six affidavits to establish residency in the United States for the requisite time periods:

An undated memorandum addressed to "To Whom It May Concern" and a May 15, 2005 affidavit by [REDACTED] who declared that she met the applicant for the first time in November 1981 at a party in Santa Ana, California; that she worked with the

applicant at Logic Graphics from 1984 to 1989; and that she knew the applicant was living in the United States between 1982 and May 1988 because she saw her at birthday parties. The affiant provided a copy of the first page of her U.S. passport issued in September 1999 and listed her U.S. addresses between January 1982 and May 1988.

A May 9, 2005 affidavit by [REDACTED] who declared that she met the applicant for the first time in February 1981 at a cultural reunion in Santa Ana, California; and that she knew the applicant lived in the United States between 1982 and May 1988 because she used to see her at cultural reunions and also at relatives' birthday parties. The affiant provided a copy of her California Driver's License issued in January 2005 and listed her U.S. address between January 1982 and May 1988.

A May 9, 2005 affidavit by [REDACTED] who declared that he met the applicant for the first time in February 1982 in Santa Ana, California at a party the applicant attended with her husband, where the affiant was a photographer; and that he knew the applicant lived in the United States between 1982 and May 1988 because he used to see her at events she attended with her husband, who is also a photographer. The affiant provided a copy of his California Driver's License issued in July 2003 and listed his U.S. address between January 1982 and May 1988.

A May 6, 2005 affidavit by [REDACTED] who declared that he met the applicant for the first time in December 1986 in Costa Mesa, California at a Mexican Christmas party; and that he knew she lived in the United States between 1986 and May 1988 because he used to see her at some birthday parties. The affiant provided a copy of the first page of his U.S. passport issued in January 1997 and indicated that when the applicant arrived in the United States he was working as a bartender assistant in Costa Mesa, California; that he lived in Mexico between January 1982 and May 1986; and that he came to the United States in September 1986.

A May 9, 2005 affidavit by [REDACTED] who declared that she met the applicant for the first time in February 1982 at a party in Santa Ana, California where the affiant's husband was a photographer; and that she knew the applicant lived in the United States between 1982 and May 1988 because she used to see the applicant at events the applicant attended with her husband who is also a photographer. The affiant provided a copy of the first page of her U.S. passport issued in November 2004 and listed her U.S. address between January 1982 and May 1988.

A May 5, 2005 affidavit by [REDACTED] who declared that he met the applicant the first time in June 1981, Costa Mesa, California, and that he knew the applicant was living in the United States between 1982 and May 1988 because he used to see her at the job where she used to pick up her husband. The affiant provided a copy of his California's Drivers License issued in October 2004 and indicated that he lived in Santa Ana, California when the applicant arrived in the United States.

In response to the director's request for further evidence, the applicant provided telephone numbers for each of the affiants listed above. In addition, she provided evidence that [REDACTED] and [REDACTED] had lived in the United States since February 1981; that [REDACTED] had lived in the United States since 1978; and that [REDACTED] had lived in the United States since 1977. As observed in the director's August 31, 2006 decision, verification phone calls were placed using the telephone numbers the applicant provided. The director found that [REDACTED] could not recall the date he first met the applicant but thought it was in the 1980s; that Mr. [REDACTED] indicated his wife, [REDACTED], was ill and unavailable to talk; that [REDACTED]'s phone had been disconnected; and that [REDACTED] did not return the two phone calls left for her. The director determined that the inability to verify the affidavits submitted cast doubt on the applicant's proof and thus that the applicant had not established eligibility for this benefit.

On appeal, the applicant asserts that [REDACTED]'s letter established periodical personal knowledge of the applicant since 1980 and that the corroborative evidence supported her claim of continuous residence in the United States since prior to January 1, 1982 and through May 4, 1988. The AAO disagrees. The affidavit by [REDACTED] indicates he first met the applicant in February 1982 and his telephone conversation with the CIS officer provides only a general time frame regarding knowledge of the applicant's whereabouts. In addition, CIS was unable to verify the remaining affiants' knowledge of the applicant and her entry into and continuous residence in the United States. Further, each affidavit provides only general information regarding how the applicant met each affiant and subsequently interacted with her. These affidavits do not provide details of the circumstances and events surrounding the initial meeting and subsequent interactions. For example, the affiants do not provide information regarding the relatives' birthday parties, such as the names of the person being celebrated and how the applicant knew the individual or others; the affiants do not provide pictures of such events or other information establishing the applicant knew the affiants and during what time period; and the affiants do not otherwise detail any events sufficiently to establish a time frame or provide information regarding the relationship with the applicant. Further, the totality of information providing in the affidavits is not sufficiently detailed to establish the applicant's unlawful presence for the requisite periods.

These deficient affidavits and the applicant's statement comprise the only documentation of the applicant's residence in the United States from prior to January 1, 1982 through the requisite time period. 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 paucity of credible supporting documentation and the applicant's reliance upon unsupported affidavits, it is concluded that she 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.

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