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U.S. Citizenship
and Immigration
Services

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FILE:

MSC-06-054-10728

Office: NEW YORK

Date: NOV 20 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:

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.

John F. Grisson, Acting 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, New York. 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, counsel asserts that the director's actions in denying the application was an abuse of discretion, that the director used the wrong evidentiary standard in reviewing the evidence, and that the discrediting of the affiants by the director was inappropriate. Counsel further asserts that there is no material misrepresentation in either the applicant's testimony or the evidence she submitted. Counsel states that the affidavits submitted are credible and amenable to verification and that the record contains sufficient documentation to establish the applicant's 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. See 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 November 23, 2005.

The applicant submitted the following attestations as evidence of her residence during the statutory period:

- A copy of a letter from the customer relations department of the Times Square Motor Hotel dated February 12, 1982 in which the representative is responding to a disputed part of a bill presented to the applicant during her stay at the hotel on February 6, 1982. It is noted by the AAO that the applicant's date of birth is December 15, 1975. Here, it is highly unlikely that the above noted hotel would have sent the applicant a letter

concerning a bill that she claims to have incurred at a time when she was only 6 years old. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

- A copy of a letter dated September 10, 1988 from [REDACTED] of Anthony's Inn of Beauty in which she stated that the applicant was employed by the company from February of 1987 to September of 1988, on a part-time basis, as a hair washer. The declarant also stated that the applicant resided at [REDACTED] in Astoria, New York during that period. Here, the declaration does not conform to regulatory standards for attestations by employers. Specifically, the declarant does not specify periods of layoffs, or whether the information concerning the applicant was taken from official company records. 8 C.F.R. § 245a.2(d)(3)(i). In addition, the record does not contain pay stubs, payment invoices, schedules, cancelled checks, personnel records, payroll records, W-2 Forms, certification of filing of federal income tax returns, payroll records or time cards to corroborate the assertions made by the declarant. Because this declaration does not conform to regulatory standards, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.
- A copy of a letter dated August 7, 1988 from [REDACTED] of the United American Association of New York in which he stated that the applicant and her parents have been registered members of the association from December of 1981 to the present. The declarant further stated that according to his information, the applicant's family came to the United States in November of 1981, and that since they have been living at [REDACTED] in Astoria, New York, they have been only attending Friday Muslim prayer and [REDACTED]. He also stated that the applicant's family has attended the organization's lectures, preaching sessions and tutorial classes. Here, the letter does not conform to regulatory standards for attestations by churches or organizations. Specifically, the letter does not establish the origin of the information being attested to nor have there been any membership records submitted to substantiate the declarant's claim. 8 C.F.R. § 245a.2(d)(3)(v). Because this declaration does not conform to regulatory standards, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.
- A copy of a letter dated April 10, 1988 from [REDACTED] in which he stated that the applicant has been his patient from January of 1985 to the present, and that her medical records are being released upon her request.

- A copy of a radiographic report dated March 9, 1988 from [REDACTED] in which he noted his medical findings concerning the applicant's health.
- A letter dated June 10, 1983 addressed to [REDACTED] from [REDACTED] in which he explains the results of the applicant's consultation with him and her physical exam results.
- A letter dated November 20, 1984 from [REDACTED] in which he stated that the applicant has been his patient from December 27, 1981 to the present, and that during this period, she visited his office a few times for her dental treatment.
- A letter dated April 8, 1988 from the Eye Place Optical in which the declarant stated that the applicant received a complete eye exam and Glaucoma Test.
- A copy of a lease agreement bearing the applicant's father's name as tenant for the premises known as [REDACTED] Astoria, New York, for the period of November 15, 1984 through November 14, 1986.
- A copy of a letter from [REDACTED] to the applicant's mother in which it was stated that the total amount for the birthday party held December 15, 1985 had been paid in full.
- A copy of an undated letter addressed to the applicant's mother from the Talbot Perkins Children's Services in which the representative stated that the previously scheduled reunion with the applicant on February 26, 1987, had been changed to February 27, 1987.
- A copy of an invitation addressed to the applicant inviting her to attend a religious celebration held on December 6, 1983.

Although these documents are some evidence of the applicant's presence in the United States during the statutory period, they are insufficient to demonstrate her continuous unlawful residence since before January 1, 1982, and throughout the requisite period. Other than the applicant's name, the medical records are unrelated to any other medical record in the proceeding. There is no explanatory statement from the applicant or her relatives detailing her medical history or otherwise corroborating the medical letters. The applicant does not state how she came into possession of the original letter from [REDACTED] to [REDACTED]. None of the medical letters references the files from which the information was taken. The applicant's mother does not submit a statement verifying that she held a birthday party for her daughter at [REDACTED] and her father does not submit supporting evidence to corroborate the nature of the lease in Astoria.

In denying the application the director noted that the evidence submitted by the applicant was not credible and was insufficient to overcome the grounds for denial.

On appeal, counsel reasserts the applicant's claim of eligibility for temporary resident status. Counsel asserts that the director's actions in denying the application was an abuse of discretion, that the director used the wrong evidentiary standard in reviewing the evidence, and that the applicant's testimony and evidence submitted is sufficient to demonstrate her eligibility for the immigration benefit sought. Counsel further asserts that the director erred in not considering the totality of the evidence and testimony that is contained in the record. The applicant does not submit any additional evidence on appeal.

In the instant case, the applicant has failed to provide sufficient, probative evidence to establish her continuous unlawful residence in the United States since prior to January 1, 1982. She has failed to overcome the issues raised by the director. There is nothing in the record of proceeding to demonstrate the authenticity of the declarations submitted. The employment letters and the association letter do not meet the regulatory criteria for such submissions. The disputed billing letter to the applicant is not credible. Although the applicant claims to have resided in the United States since she was six years old, she has provided neither school records nor immunization records to substantiate such claim. She has also failed to provide evidence from or about any responsible adult or guardian sufficient to demonstrate the circumstances of how she lived during her childhood and throughout the requisite period.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, and the inconsistencies in the evidence discussed above 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 that are lacking in probative value, 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.