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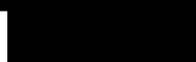
U.S. Citizenship
and Immigration
Services

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FILE:



Office: LOS ANGELES

Date: OCT 17 2008

MSC-06-091-12405

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. 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.

A handwritten signature in black ink, appearing to be "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. 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. Specifically, the director stated that affiants from whom the applicant submitted evidence failed to submit evidence that they themselves continuously resided in the United States during the requisite period. Therefore, the director determined the applicant was not eligible to adjust to temporary resident status pursuant to the CSS/Newman Settlement Agreements and denied the application.

On appeal, the applicant asserts that she was nervous at the time of her interview, which caused her to confuse dates. She submits additional evidence in support of her 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 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) 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 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 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 a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on December 29, 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 indicated her addresses in the United States during the requisite period were all in Newhall, California as follows: [REDACTED] from August 1981 to 1984; [REDACTED] from 1984 to 1988; and [REDACTED] from 1988 to 1993. At part #32 where the applicant was asked to list all of her absences from the United States, she indicated that she was absent once during the requisite period, when she traveled to Mexico to visit family from November to December in 1987. At part #33, where the applicant was asked to list all of her employment in the United States since she first entered, she stated that she was a self-employed babysitter from August 1981 to 1991. She did not indicate an address associated with this employment.

Also in the record is a sworn statement taken from the applicant at the time of her interview with a Citizenship and Immigration Services (CIS) officer on November 16, 2006. The applicant

claimed that she resided continuously in the United States from August 1981 until the end of the requisite period, applying for legalization in May 1988. She stated that she resided with her mother and her siblings and that from 1981 to 1991 she babysat her siblings.

The applicant has the burden of proving by a preponderance of the evidence that she has resided in the United States for the requisite period. 8 C.F.R. § 245a.2(d)(5). To meet her burden of proof, an applicant must provide evidence of eligibility apart from her own testimony. 8 C.F.R. § 245a.2(d)(6). The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that an applicant may submit to establish proof of continuous residence in the United States during the requisite period. This list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts or letters. An applicant may also submit any other relevant document pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The applicant submitted the following evidence that she resided in the United States for the requisite period:

- A declaration from [REDACTED] who submits his Resident Alien Card and states that he is the applicant's father. The declarant asserts that he and the applicant entered the United States when she was 12 years old. He states that they first resided in Newhall after their arrival, but that he did not enroll her in school because he was afraid that she would be deported if he did so, as she was not documented. He asserts that in December 1987 he went with his family to apply for legalization but that they were turned away.
- A declaration from [REDACTED], who states that he knows that the applicant has resided in the United States since 1981 because when he arrived in the United States, he lived across from her building. He states that he was in school in 1981 but that he began working in 1984. He submits a photocopy of his Social Security Earnings Statement, which indicates that he worked in the United States from 1984 until the end of the requisite period.
- A declaration from [REDACTED], who submits photocopies of her California Driver's License and her Certificate of Naturalization and states that she knows that the applicant has resided in the United States since 1982. She states that when she arrived in the United States, her mother was renting the applicant a room. The declarant states that she attended school, but the applicant did not because she helped her mother care for her siblings. The declarant states that the applicant continues to rent a room from her mother. It is noted that the declarant submitted photocopies of her school records, which indicate that she attended school since at least April 1986. The declarant also submitted a photocopy of her immunization records, which indicate that she received immunizations

from 1982 to 1985. However, these records do not state where the declarant received these immunizations.

- A declaration from [REDACTED] who submits a photocopy of her Certificate of Naturalization and states that she personally knows that the applicant has resided in the United States since August 1981 because her sister rented a room to the applicant's mother. She states that she also resided with her sister and that she got to know the applicant because they both babysat.
- A declaration from [REDACTED], who submits a photocopy of her Certificate of Naturalization and states that she knows that the applicant has resided in the United States since August 1981 because she rented a room to the applicant and her mother. She states that the applicant has resided with her since 1981 and continues to reside with her.

The director denied the application for temporary residence on January 10, 2007. In denying the application, the director stated that the probative value of the testimony in the declarations submitted in support of the application was limited, as, though they are not required to do so, the declarants failed to provide evidence that they themselves were present in the United States from before January 1, 1982 until the end of the requisite period. Therefore, the director found the applicant failed to satisfy her burden of proof.

On appeal, the applicant she was nervous and confused at the time of her interview, which caused her to confuse dates. She states that she has resided in the United States since 1976 and that she was paid in cash for her work. It is noted that the applicant has previously stated that she did not enter the United States until 1981 and that she was not employed during the requisite period. This inconsistency casts doubt on whether the applicant has accurately stated the date that she first entered the United States to CIS.

Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The applicant submits additional evidence that is relevant to her claim that she resided in the United States during the requisite period as follows:

- A declaration from [REDACTED], who submits a photocopy of his Certificate of Naturalization, his California Senior Citizen Identification Card and his Resident Alien Card and states that he has known the applicant since 1981. He states that he met the applicant through her father at a get-together. However, he does not state where this get-together was or whether it occurred in the United States. The declarant

states that he is still in touch with the applicant. However, the declarant fails to state that he knows that the applicant resided in the United States during the requisite period. Therefore, this declaration carries no weight as evidence that she did so.

- A declaration from [REDACTED] who submits a photocopy of his Certificate of Naturalization and his California Driver's License and states that he knows that he knows that the applicant has been present in the United States since 1981. He states that he has been friends with her family for many years. He states that he was friends with her father. However, the declarant does not state when he first met the applicant or whether he first met her in the United States. He fails to indicate the frequency with which he saw the applicant during the requisite period or to indicate whether there were periods of time during the requisite period when he did not see the applicant. Because it is significantly lacking in detail, this affidavit carries only very minimal weight as evidence that the applicant resided in the United States during the requisite period.
- A declaration from [REDACTED] who submits photocopies of documents that indicate he has been present in the United States since 1989 and a photocopy of his California Identification Card. The declarant states that he knows that the applicant has been present in the United States since 1981. He states that he has been friends with the applicant's family for many years. The declarant states that his wife and the applicant's mother are good friends. However, the declarant does not state when he first met the applicant or whether he first met her in the United States. He fails to indicate the frequency with which he saw the applicant during the requisite period or to indicate whether there were periods of time during the requisite period when he did not see the applicant. Because it is significantly lacking in detail, this affidavit carries only very minimal weight as evidence that the applicant resided in the United States during the requisite period.
- A declaration from [REDACTED] who submits a photocopy of his California Driver's License and a photocopy of a document from a bank in the United States that indicates that the declarant obtained an insurance policy on November 16, 1978. The declarant states that he knows that the applicant came to his home in Canyon Country, California with her mother in January 1981. He states that the applicant's mother cleaned his home every two weeks. However, he does not state whether the applicant came to his house with her mother on a regular basis, or to otherwise indicate the frequency with which he saw the applicant during the requisite period. He further fails to state whether there were periods of time during the requisite period when he did not see the applicant. Further, though this declarant states that the applicant came to his home in California in January of 1981, both on her Form I-687 at the time of her interview with a CIS officer regarding that application, the applicant stated that she entered the United States for the first time in August of 1981. Because it is significantly lacking in detail, and because it contains testimony regarding the applicant's presence in the United State prior to the date she stated she entered the United States for the first time, this affidavit carries only very

minimal weight as evidence that the applicant resided in the United States during the requisite period.

In summary, though the applicant has provided declarations attesting to her residence in the United States during the requisite period, these declarations are significantly lacking in detail such that they can only be accorded minimal weight as evidence of her presence during that time. Further, on appeal, the applicant has submitted a statement in which she asserts that she first entered the United States in 1976. She also submitted a declaration from [REDACTED] who asserts that the applicant was present in his home in California in January of 1981 with her appeal. However, as was previously noted, the applicant indicated that her first residence in the United States began in August of 1981 on her Form I-687. She also signed a sworn statement on November 16, 2006, on which she stated that she entered the United States in August 1981. This casts doubt on the credibility of both the statement from the applicant and on the declaration from [REDACTED] both submitted on appeal, both of which attest to her presence in the United States before August of 1981.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of when she first entered the United States and of her continuous residence for the requisite period, as well as the inconsistencies and contradictions noted in the record, seriously detract 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 she has failed to establish by a preponderance of the evidence that she has continuously resided in an unlawful status in the United States for the requisite period 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.

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