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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
MSC-06-073-12238

Office: LOS ANGELES

Date: OCT 28 2008

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:



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 director of the Los Angeles office. 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 for the applicant asserts that the evidence submitted credibly shows the applicant's entitlement to relief; the applicant desires to clarify the record and support her claim; due process requires that the applicant be given an opportunity to provide further explanation, testimony and evidence; and the applicant's documentation meets the preponderance of the evidence standard. The applicant also provides documents that she had already submitted or that do not relate to the requisite period.

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 12, 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 listed the following addresses during the requisite period: [REDACTED] Camarillo, California from 1980 to 1986; [REDACTED], Santa Maria, California for three months from 1985 to 1986; and [REDACTED], Oxnard, California from 1986 to 1989. At part #33 where applicants were asked to list all employment in the United States since entry, the applicant listed the following positions: Babysitting for sister [REDACTED] from 1980 to 1981; babysitting for [REDACTED] from 1981 to 1982; assembler for J.L.C.S. Contract Sewing from 1983 to 1984; janitorial services for Dasia Sports Inc. from January 1984 to May 1985; farm laborer for [REDACTED] from May 1985 to May 1986; and housewife from June 1986 to December 1988.

In an attempt to establish continuous unlawful residence in this country throughout the requisite period, the applicant provided voluminous documentation, much of which does not relate to the requisite period. The applicant also provided copies of photos and other documents, together with multiple attestations.

The applicant provided multiple photocopies of photographs. The photographs lack features to identify when and where they were taken. Therefore, they will be given no weight in establishing that the applicant resided in the United States during the requisite period.

The applicant provided a courtesy check-cashing card from Vons Grocery Company, listing the applicant's name and dated February 27, 1984. Since this document fails to list the applicant's address, it merely tends to show that the applicant was present in the United States in February 1984.

The applicant provided a photocopy of a letter from [REDACTED], president of Dasia Sports Inc. in Camarillo, California. The letter is dated October 1, 1987 and addressed to the applicant at the [REDACTED] address. This letter states that Dasia Sports Inc. was informed by the applicant's sister that the applicant would be available to work for the company, and it offers the applicant a job as an assembler. This document is inconsistent with the applicant's statements on her Form I-687 application, where she indicated that she worked for Dasia Sports Inc. providing janitorial services from January 1984 to May 1985. This casts doubt on the authenticity of the letter from [REDACTED], which appears to indicate that the applicant had not worked for Dasia Sports Inc. prior to October 1987. Therefore, this document will be given no weight in establishing that the applicant resided in the United States in October 1987.

The attestations provided for the applicant from [REDACTED] and [REDACTED] both indicate that the affiant met the applicant after the end of the requisite period. Therefore, these documents will be given no weight in establishing that the applicant resided in the United States during the requisite period.

The applicant provided an affidavit from [REDACTED], which states that the applicant worked for the affiant with [REDACTED] from 1985 through 1986 for about 98 days. Since the applicant was paid in cash, no check stubs are available and the employer was not responsible for taxes and payroll benefits. This affidavit does not conform to regulatory standards for letters from employers as stated in 8 C.F.R. § 245a.2(d)(3)(i). Specifically, the affidavit does not include the applicant's address at the time of employment or periods of layoff. Therefore, it will be given only minimal weight in establishing that the applicant resided in the United States for 98 days at some time between 1985 and 1986.

The affidavit from [REDACTED] states that the affiant met the applicant in 1980 when the applicant moved into her neighborhood in Camarillo, California. They also worked together at Contract-Sewing, the business of [REDACTED]. The applicant began working there in 1983.

The affiant described contact with the applicant driving to work and attending parties. The affiant stated that she moved to Oxnard, California in 1988. The affiant failed to mention that the applicant lived in Santa Maria, California for three months in 1985 to 1986 and that she moved to Oxnard, California in 1986. The affiant also failed to provide detail regarding the frequency of her contact with the applicant and the towns where the applicant resided during the requisite period. Therefore, this affidavit merely constitutes some limited evidence that the applicant resided in the United States from 1980 until sometime in 1983.

The affidavit from [REDACTED] states that the affiant met the applicant in 1983 through her sister, who was working at his business at the time. The declaration states, "We employed her at our business, JLCS Contract Sewing in 1983-1984." This statement does not clarify whether the affiant is confirming the applicant's employment or her sister's employment. In addition, this declaration does not conform to regulatory standards for letters from employers as stated in 8 C.F.R. § 245a.2(d)(3)(i). Specifically, the affidavit does not include the applicant's address at the time of employment, whether or not the information was taken from official company records, where the records are located, and whether CIS may have access to the records. Considering these deficiencies, this declaration will be given only nominal weight in establishing that the applicant resided in the United States during 1983 and 1984.

The affidavit from [REDACTED] dated November 15, 2005 states that the affiant met the applicant in 1981 when the applicant was hired by the affiant's sister to babysit for almost one year. The affiant stated that she has personal knowledge that the applicant has resided in the United States since 1981, but she failed to explain the origins of this knowledge. She failed to provide details including the nature and frequency of her contact with the applicant, and the region where the applicant resided during the requisite period. Therefore, this affidavit constitutes some evidence that the applicant resided in the United States in 1981, but it will be given only nominal weight in establishing that she resided in the United States during the remainder of the requisite period.

The applicant submitted an affidavit from [REDACTED], which states that the applicant is the affiant's daughter. The affiant stated that the applicant went to the United States in 1980 and lived in Camarillo, California. The affiant stated that the applicant has lived in the United States, "ever since." This declaration lacks detail regarding the nature and frequency of the affiant's contact with the applicant and the regions where the applicant resided during the requisite period. Considering that the affiant is the applicant's mother, this affidavit is found to be lacking in detail and, therefore, will be given only nominal weight in establishing that the applicant resided in the United States during the requisite period.

The affidavit from [REDACTED] states that the affiant hired the applicant to babysit from April to December 1981. The affiant stated that she and the applicant "always stayed in touch" after the applicant stopped working for her. This affidavit fails to specifically state that the applicant resided in the United States during the requisite period at any time other than during 1981. Rather, the affidavit merely confirms that the affiant stayed in touch with the applicant. The

affidavit lacks detail regarding the nature and frequency of contact between the affiant and the applicant, and the regions where the applicant resided during the requisite period. Therefore, this affidavit constitutes some evidence that the applicant resided in the United States in 1981, but it will be given only nominal weight in establishing that she resided in the United States during the remainder of the requisite period.

The affidavit from [REDACTED] states that the affiant is the applicant's sister and has known her for her whole life. The affiant stated that the applicant lived with her in 1980 and that they worked together in 1983 and 1984. The affiant also stated that the applicant went to Santa Maria in 1985 to work as a picker, that she was there for only approximately three weeks, and that she worked no more than a total of 100 hours in the field before returning to Camarillo. This information is inconsistent with the applicant's statements on the Form I-687 and the affidavit from [REDACTED], indicating that the applicant was a farm laborer for 98 days between May 1985 and May 1986. This inconsistency casts doubt on the affiant's ability to confirm that the applicant resided in the United States throughout the requisite period, on the authenticity of the affidavit from [REDACTED], and on the applicant's claim to meet the residency requirements for temporary resident status.

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, counsel for the applicant asserts that the evidence submitted credibly shows the applicant's entitlement to relief; the applicant desires to clarify the record and support her claim; due process requires that the applicant be given an opportunity to provide further explanation, testimony and evidence; and the applicant's documentation meets the preponderance of the evidence standard. The applicant also provides documents that she had already submitted or that do not relate to the requisite period.

In summary, the applicant has provided contemporaneous evidence indicating that she was present in the United States in February 1984. She has provided attestations from individuals who met the applicant after the requisite period or that do not conform to regulatory standards, lack sufficient detail, or are inconsistent with the applicant's Form I-687 or other documents that the applicant submitted. She has provided one attestation that support her claim to have resided in the United States from 1980 until sometime in 1983 and one attestation supporting her claim to have resided in the United States during 1981. The applicant has failed to provide sufficient credible evidence of her residence in the United States from 1984 until the end of the requisite period.

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 contradictions between the applicant's Form I-687 and the documents she submitted, and given her reliance upon documents with minimal 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.