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U.S. Citizenship
and Immigration
Services

LI

FILE:

MSC-06-081-11840

Office: LOS ANGELES

Date: **SEP 02 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. 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 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 noted that the affidavits submitted in support of the application were insufficient to establish continuous residence in the United States. 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, the applicant asserts that the affidavits submitted establish the applicant's continuous residence for the requisite period. The applicant also offers explanation of the apparent inconsistencies noted by the director in the decision.

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)(1) 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 20, 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 her addresses during the relevant period in the United States to be [REDACTED] in Chino, California, from April 1981 to 1983; [REDACTED] in Chino, California from 1983 until November 1988; and [REDACTED] in Lynwood, California from November 1988 until February 1989.

The applicant submitted the following documentation:

- A declaration from [REDACTED] who states that she was living in Chino, California when the applicant, arrived in the United States in 1981. [REDACTED] states that the applicant lived with her and assisted her near the end of her pregnancy and for the first few months after her child, [REDACTED] was born in May 1981. She indicates that the applicant lived in her home with her until August 1981 as a live-in babysitter, but she does not provide the

address. She also does not indicate the address where the applicant moved in August of 1981. The declarant indicates that the applicant “worked for me throughout the years whenever I needed a babysitter.” She does not indicate the frequency of their contact or provide any additional relevant details that are probative of the applicant’s continuous residency. Her testimony will be given some weight.

- A declaration from [REDACTED] daughter of [REDACTED]. Like her mother, [REDACTED] indicates that the applicant cared for her when she was born and that the applicant babysat for the family “when called upon to do so.” She does not indicate that she has direct, personal knowledge of the address at which the applicant was residing during the requisite period. Furthermore, since she was an infant and small child at the time period in question, her direct knowledge of the applicant’s residency is limited.
- A declaration from [REDACTED] uncle of the applicant. Mr. [REDACTED] indicates the he was “aware” that the applicant entered the United States in 1981 because he saw her soon after her arrival. He indicates that “during 1981-1988 we remained in contact and we went together to the park with other family members several times and to Disneyland on one occasion.” He does not provide an address where the applicant resided during the requisite period or any other details of the events and circumstances of the applicant's residence. Accordingly, his testimony will be given little probative weight.
- A declaration from [REDACTED], who indicates that she “has always known [REDACTED] to be in my life as well as my family’s.” She provides no address where the applicant lived during the requisite period and she does not indicate the frequency of her contact with the applicant. It is also noted that the declarant was born in 1984 and therefore, her direct knowledge of the applicant’s residency for the requisite period is limited.
- A declaration from [REDACTED], the applicant’s sister-in-law. Ms. [REDACTED] indicates that she first met the applicant in December 1980 in Mexico City. She states that “. . . a few months later I heard through my parents that [REDACTED] had moved to the United States . . .” She does not indicate that she has any direct, personal knowledge of the applicant’s continuous residency in the United States for the requisite period, nor does she provide any addresses where the applicant resided in the United States or any other details which are probative of the applicant’s continuous residency. Her testimony will be given nominal weight.
- A declaration from [REDACTED] the applicant’s brother. Mr. [REDACTED] indicates that he was “aware that [REDACTED] came to work in the United States in 1981,” though he lived in Mexico during that time. He indicates that he did not see the applicant from 1981 until April of 1988.” Accordingly, he does not provide direct, personal knowledge of the applicant’s residency in the United States.

- A declaration from [REDACTED] the applicant's cousin. He indicates that he was "aware that [REDACTED] came to the United States in 1981 because my father, her uncle, informed me that she had left to the U.S." He further indicates that he entered the United States illegally in 1985 and he would visit the applicant "at family get-togethers, picnics at the park." His testimony provides some evidence of the applicant's residency in the United States from 1985 until the end of the requisite period and it will be given some evidentiary weight.
- A declaration from [REDACTED] The declarant indicates that her family lived three hours from the applicant's family in Mexico but that their fathers were good friends. She indicates that ". . . in early 1981 Ana with her father came to visit us in Michoacan, Mexico and it was during this visit that Ana informed us that she was going to go to the United States." She further indicates that she did not see the applicant from 1981 until 1989. Thus, she does not have direct, personal knowledge of the applicant's residency in the United States. Accordingly, her statements will be given no weight.
- A declaration from [REDACTED] who indicates that the applicant moved to the United States in 1981. She does not indicate an address where the applicant lived in the United States, and she offered no specific information regarding how frequently and under what circumstances she saw the applicant during the relevant period, nor did she provide any relevant details regarding the applicant's residence in the United States. Accordingly, her statements will be given nominal weight.
- The applicant submitted copies of 25 envelopes which appear to be addressed to the applicant and which are sent via airmail from Mexico. The envelopes are date stamped in 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, and 1989. However, all 25 envelopes are addressed to the applicant at [REDACTED], Lynwood, California. According to the applicant's Form I-687 application, she resided at that address for only three months, from November 1988 until February 1989. It is not clear from the record why the envelopes would be received by the applicant at the "[REDACTED]" address for the entire requisite period when she only lists this as her address for a three month period in 1988-1989. 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. at 591-92. In this case, the evidentiary value of the envelopes is negated by this inconsistency and they have no probative value.

In addition, the record of proceeding contains a Form I-485, application under the LIFE Act which was denied by the District Director, Los Angeles on July 9, 2004. In connection with this application, the applicant submitted evidence of her continuous residency for the requisite period. Specifically, the applicant submitted:

- A declaration from [REDACTED], who indicates that the applicant cleaned her home and did some baby-sitting from August 1981 until July 1991. She provides two addresses for the applicant. The first, [REDACTED] Chino, California from August 1981 until October 1983, and the second, [REDACTED] from October 1983 until July 1991. In her Form I-687 application, the applicant indicates that she resided at [REDACTED] in Lynwood, California from November 1988 until February 1989. This inconsistency is significant also because of the envelopes addressed to the applicant which were sent to the "Cedar St." address. Accordingly, her testimony will be given nominal weight.
- A declaration from [REDACTED] who indicates that the applicant worked for her from 1984 until 1989. She does not provide any additional relevant information or addresses for the applicant. **Additionally, her statement does not conform with certain regulatory standards set forth at 8 C.F.R. § 245a.2(d)(3)(i), which provides that letters from employers must include the applicant's address at the time of employment; exact period of employment; whether the information was taken from official company records and where records are located and whether CIS may have access to the records; if records are unavailable, an affidavit form-letter stating that the employment records are unavailable may be accepted which shall be signed, attested to by the employer under penalty of perjury and shall state the employer's willingness to come forward and give testimony if requested.** The statement by [REDACTED] does not include much of the required information and can be afforded minimal weight as evidence of the applicant's residence in the United States for the duration of the requisite period.
- An affidavit from [REDACTED], who indicates that he is a retired clergyman and who "knew the family from the services I did during my tenure in the Diocese of San Bernardino. She participated as a choir member and helped out in other events." This letter does not conform to the statutory requirements for attestations by churches, unions, or other organizations, which is found at 8 C.F.R. § 245a.2 ((d)(3)(v). That regulation requires such attestations to "show the inclusive dates of membership and state the address where the applicant resided during the membership period." [REDACTED] does not provide dates of the applicant's membership or any other information that is probative of the issue of her initial entrance to the United States prior to January 1982 or her continuous residence for the duration of the statutory period. Thus, it can be given no probative weight.
- A declaration from [REDACTED], who indicates that the applicant lived with her family since April 4, 1981 when the applicant called her to ". . . go pick her up after she had crossed the border . . ." She also provides two addresses for the applicant during the relevant period. The first, [REDACTED], Chino, California from April 1981 until October 1983, and the second, [REDACTED] from October 1983 until July 1991. In her Form I-687 application, the applicant indicates that she resided at [REDACTED] in Lynwood, California from November 1988 until February 1989. She also asserts that she lived with

from April 1981 until August 1981. These inconsistencies are noted and diminish the evidentiary value of [REDACTED]'s declaration.

The director denied the application for temporary residence on December 13, 2006. In denying the application, the director noted that the evidence submitted in support of the application was insufficient to establish continuous residency for the requisite period. Thus, the director determined that the applicant had failed to meet her burden of proof by a preponderance of the evidence.

On appeal, the applicant asserts that she did arrive in the United States in 1981 and remained in the United States continuously for the requisite period, and notes several apparent errors made by the Service in the Notice of Denial.

The AAO conducts a *de novo* review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(d)(6). The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) (“On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO’s *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). Accordingly, despite the director’s confusing and unclear reasoning in the denial, the AAO has concluded after *de novo* review, that the applicant has not met her burden of proof.

While an applicant's failure to provide evidence other than affidavits shall not be the sole basis for finding that she failed to meet the continuous residency requirements, an application which is lacking in contemporaneous documentation cannot be deemed approvable if considerable periods of claimed continuous residence rely entirely on affidavits which are considerably lacking in certain basic and necessary information. As discussed above, the affiants' statements are significantly lacking in detail and do not establish that the affiants actually had personal knowledge of the events and circumstances of the applicant's residence in the United States. Few of the affiants provided much relevant information beyond acknowledging that they heard that the applicant entered the United States in 1981. Overall, the affidavits provided are so deficient in detail that they can be given little significant probative value.

As is stated above, 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). The applicant has been given the opportunity to satisfy his burden of proof with a broad range of evidence pursuant to 8 C.F.R. § 245a.2(d)(3).

The absence of sufficiently detailed 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 applicant's reliance upon affidavits with minimal probative value, envelopes addressed to an address where the applicant was admittedly not residing, and her own inconsistent statements on her Forms I-687, it is concluded that she has 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.

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