



U.S. Citizenship
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FILE: [REDACTED]
MSC-06-101-26740

Office: LOS ANGELES

Date: **SEP 10 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: 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.

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. 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 she was nervous during her interview with immigration officers and confused dates and her employment history. She submits declarations as evidence on appeal.

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 his or 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 January 9, 2006. On the application at part # 30 she indicated that she resided at [REDACTED], San Fernando, California from 1981 to 1983; and at [REDACTED], Pacoima, California from 1983 to 1986. Similarly, at part # 33 of the application, the applicant indicated that she has worked as a babysitter since 1981.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted the following attestation with her application:

- A declaration from [REDACTED] dated August 18, 2005 in which he stated that he has knowledge that the applicant has lived in the United States since 1981. He further states that his knowledge is based upon the fact that the applicant called him when she came to the United States to visit with her, and that they are childhood friends. The declarant also stated that they have kept in touch with each other by visiting each other's home. The declarant fails to provide any relevant and verifiable testimony, such as the applicant's places of residence in this country, to corroborate the applicant's claim of

residence in the United States since prior to January 1, 1982. Because this declaration is lacking in detail, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

- A declaration from [REDACTED] dated December 17, 2005 in which he stated that he has known the applicant to live in the United States since 1981 and that she came to live in San Fernando, California. The declarant fails to indicate the frequency with which he saw and communicated with the applicant during the requisite period. The declarant fails to provide any relevant and verifiable testimony, such as the applicant's specific places of residence in this country, to corroborate the applicant's claim of residence in the United States since prior to January 1, 1982. Because this declaration is lacking in detail, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

In response to the director's Request for Evidence, the applicant provided the following attestations:

- A declaration from [REDACTED] dated November 10, 2006 in which he stated that he employed the applicant as a babysitter and that the applicant works from 8:00 am to 4:00 pm, Monday through Friday, and overtime whenever it is needed. He also stated that he pays the applicant \$75.00 per week. This declaration does not conform to regulatory standards for attestations by employers. Specifically, the declarant does not specify the applicant's dates of employment. 8 C.F.R. § 245a.2(d)(3)(i). Neither does the record contain copies of personnel records, cancelled checks or pay statements that pertain to the requisite period to corroborate the assertions made by the declarant. Because the declaration does not conform to regulatory standards, it can be accorded little weight in establishing that the applicant resided in the United States during the requisite period.
- A declaration from [REDACTED] in which she stated that she has known the applicant and her family since 1987. The declarant fails to indicate the frequency with which she saw and communicated with the applicant during the requisite period. The declarant fails to provide any relevant and verifiable testimony, such as the applicant's specific places of residence in this country, to corroborate the applicant's claim of residence in the United States since prior to January 1, 1982. Because this declaration is lacking in detail, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

In denying the application, the director noted that the applicant had failed to provide sufficient evidence necessary to establish the applicant's eligibility for the benefit sought.

On appeal, the applicant asserts her claim of eligibility for temporary resident status. She asserts that she has lived in the United States since 1981, that she would get paid in cash, and that she paid all of her bills in cash, and so didn't have any receipts for any bills. She also states that she

was nervous during her interview and as a result gave incorrect dates and employment history. She submits the following declarations:

- A declaration from [REDACTED] in which he states that he has known the applicant since she came to the United States in 1981 and resided at [REDACTED] in Pacoima, California.
- A declaration from [REDACTED] in which he states that he has personally known the applicant since 1981 when she arrived in the United States and resided at [REDACTED] in Pacoima, California.
- A declaration from [REDACTED] in which she states that her sister has been living in the United States since 1981, and that the applicant resided at [REDACTED] in Pacoima, California until 2005.
- An affidavit from [REDACTED] in which he states that he has known the applicant since she was born, that as cousins they have kept in touch throughout the years, and that they were reunited when the applicant came to the United States in 1981. He also states that the applicant resided at [REDACTED] in Pacoima, California.
- An undated declaration from [REDACTED] in which she states that she personally knew the applicant in Mexico and was reunited with her when the applicant came to Pacoima, California in 1981
- An undated declaration from [REDACTED] in which he states that he has known the applicant since 1983 and that he and the applicant and her husband reunited at a reunion when they resided at [REDACTED] in Pacoima, California.

The majority of the affiants and declarants included copies of their identification. However, the declarations are inconsistent with what the applicant indicated on her Form I-687 application where she stated that she resided at [REDACTED] in San Fernando, California from 1981 to 1983. The declarants fail to specify the frequency with which they saw and communicated with the applicant, or any other detail that would lend credence to their claimed knowledge of the applicant and the applicant's residence in the United States during the requisite period. Because the declarations, it can be afforded only minimal weight in establishing that the applicant resided in the United States during the requisite period. Because the declarations are inconsistent with the applicant's statements in her I-687 application, and because the declarations are significantly lacking in detail, they can be afforded only little weight in establishing that the applicant resided in the United States during the requisite period.

The applicant also submitted the following attestations:

- A declaration from [REDACTED] in which he states that he has known the applicant since childhood and that the applicant left her hometown in 1981. He also

states that he did not come in contact with her in the United States until 1988. Here, the declarant fails to specify the frequency with which he saw and communicated with the applicant, or any other detail that would lend credence to his claimed knowledge of the applicant and the applicant's residence in the United States during the requisite period.

- A declaration from _____ in which he stated that he has known the applicant since 1988 when he met her through a mutual friend named _____. Although this statement serves as some evidence of the applicant's presence in the United States since 1988, it is insufficient to demonstrate her continuous residence throughout the requisite period.
- An affidavit from _____ in which he stated that he has known the applicant in the United States since 1981, that they were childhood friends, and that when he heard that she was in the country he went to visit her. He also states that they see each other often. The declarant fails to provide any relevant and verifiable testimony, such as the applicant's places of residence in this country, to corroborate the applicant's claim of residence in the United States since prior to January 1, 1982. Because this declaration is lacking in detail, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

In the instant case, the applicant has failed to overcome the basis for the director's denial. The attestations submitted are not sufficient to meet the applicant's burden of proof by a preponderance of the evidence.

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 attestations that are inconsistent with her statements made in her I-687 application and that have little 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.