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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: 
MSC 06 098 21789

Office: NEWARK

Date: SEP 16 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: 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 Acting District Director, Newark. The matter is now before the Administrative Appeals Office 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 (the 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 during the requisite period.

On appeal, the applicant reiterated her claim of continuous residence in the United States during the period of requisite residence.

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 Immigration and Nationality Act (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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant’s own testimony. 8 C.F.R. § 245a.2(d)(6).

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.* 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.

On the Form I-687 application, which the applicant signed on December 29, 2005, the applicant was required to provide an exhaustive list of her residences in the United States since her first entry. As part of that residential history, the applicant stated that, from October 1981 to April 1986, she lived at [REDACTED] in Buena Park, California; and from June 1986 to October 1987 she lived at [REDACTED] in San Jose, California.

The applicant was also required to provide an exhaustive list of all of her employment in the United States since January 1, 1982. As part of that employment history, the applicant stated that she worked from October 1981 to April 1986 as a live-in caregiver for “[REDACTED]” at [REDACTED] in “Chartsworth,” California.¹ The applicant also stated that she worked from June 1986 to October 1987 as a live-in Caregiver for [REDACTED] at [REDACTED] in Woodland Hills, California; and from November 1987 to December 1989 as a live-in caregiver for Home Care Manor at [REDACTED] in Winnetka, California.

Clearly, if the applicant lived at the home addresses provided and worked at the work addresses provided, she did not work as a “live-in caregiver.” Further, the applicant’s claimed home address in Buena Park is approximately 50 miles from her claimed work address in Chatsworth, California and the applicant’s claimed home address in San Jose, California is over 300 miles from her claimed work address in Woodland Hills, California. As such, she is unlikely to have commuted.

Doubt cast on any aspect of the applicant’s proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, the applicant must

¹ This office notes that a senior living facility named Chatsworth Park Care Center exists at that address in Chatsworth, California, and believes that is the facility to which the applicant meant to refer.

resolve any inconsistencies in the record with competent, independent, objective evidence. Attempts to explain or reconcile such inconsistencies, absent competent objective evidence sufficient to demonstrate where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The unexplained discrepancy between the applicant's claim of working as a live-in caregiver and her provision of home addresses separate from her work address casts doubt on the accuracy of the applicant's assertions.

The pertinent evidence in the record is described below.

- The record contains a form affidavit, dated October 24, 2005, from [REDACTED] of [REDACTED] in Buena Park, California, who states that he is a friend of the applicant. Mr. [REDACTED] stated that from October 1981 to April 1986 the applicant lived at the [REDACTED] address. The record contains the affiant's passport, issued September 18, 2002, and his California driver's license, issued July 2, 2003, but no evidence that the affiant was in the United States before those dates or where he may then have lived.
- The record contains a form affidavit, dated October 26, 2005, from [REDACTED] of [REDACTED] in San Jose, California, who stated that she is the applicant's cousin. The affiant stated that the applicant lived at the [REDACTED] address from June 1986 to October 1987. The affidavit was accompanied by a copy of the affiant's California driver's license, issued October 17, 2003, and her U.S. passport, issued November 2, 1995, but no evidence that she was in the United States prior to those dates or where she may then have lived.
- The record contains a form affidavit, dated November 10, 2005, from [REDACTED] of [REDACTED] in Hollywood, California. Mr. [REDACTED] stated that the applicant is a close friend of his ex-girlfriend and that the applicant also lived at the [REDACTED] address from November 1987 to December 1989. This office notes that the applicant did not list that address on the Form I-687 application, where she was required to provide an exhaustive list of her addresses in the United States since her initial entry. The record contains a copy of the affiant's California driver's license, issued March 2, 2005, but no evidence that he was in the United States prior to that date, or where he may have lived.
- The record contains a form affidavit, dated October 27, 2005, from [REDACTED] of San Jose, California, who stated that she is the applicant's cousin. The affiant stated that she personally knows that the applicant lived at [REDACTED] in Buena Park, California from October 1981 to April 1986; at [REDACTED] in San Jose, California from June 1986 to October 1987; and at [REDACTED] in Hollywood, California from November 1987 to December 1989. The applicant did not state the basis of her alleged knowledge of the applicant's residence during the period of requisite residence. The affidavit was accompanied by a copy of the affiant's California driver's license, issued February 6, 2004, and her U.S. passport, issued December 11, 2001, but no evidence that she was in the United States prior to those dates or where she may have lived.

- The record contains a copy of the applicant's Social Security Statement, issued by the Social Security Administration on February 12, 2002. That statement shows that the applicant had income during each year from 1990 to 2000, but shows no income prior to 1990.

The record contains no other evidence pertinent to the applicant's residence in the United States during the salient period.

In a Notice of Intent to Deny (NOID), dated December 14, 2006, the director noted the lack of detail in the applicant's affidavits and stated that the applicant had failed to submit evidence sufficient to demonstrate her entry into the United States prior to January 1, 1982, and continuous residence during the requisite period. The director granted the applicant thirty days to submit additional evidence. The record contains no response from the applicant.

In the Notice of Decision, dated January 27, 2007, the acting director denied the application based on the reasons stated in the NOID, that is, that the applicant had failed to demonstrate her continuous residence in the United States during the requisite period.

On appeal, the applicant stated that she has no additional evidence pertinent to her continuous residence in the United States during the requisite period and urged that the sufficiency of the evidence submitted be reexamined.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate entry into the United States prior to January 1, 1982, and continuous residence during the requisite period.

None of the applicant's affiants made explicit the basis of their asserted knowledge of the applicant's residences during the requisite period. The only affidavits that even imply that the applicant entered the United States prior to January 1, 1982 are those of _____ and _____, and those affiants do not state when they first encountered the applicant in the United States or how they are able to remember when that was.

The evidence must be evaluated not by the quantity of evidence alone but by its quality. The evidence in the instant matter is insufficient to demonstrate that the applicant was present, or even likely present, in the United States before January 1, 1982 and insufficient to demonstrate that she resided continuously in the United States for the duration of the requisite period.

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 its amenability to verification. Given the paucity of credible supporting documentation the applicant has failed to meet her burden of proof and failed to establish continuous residence in an unlawful status in the United States during the requisite period. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act. The application was correctly denied on this basis, which has not been overcome on appeal. The appeal will be dismissed.

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