



U.S. Citizenship
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FILE: [REDACTED]
MSC-06-101-16860

Office: LOS ANGELES

Date: **SEP 22 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. 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 denied the application because she found that there were inconsistencies in the testimony and evidence provided by the applicant. Specifically, the applicant had testified that she departed the United States on four occasions during the requisite period: January 8, 1982, July 30, 1983, September 10, 1985 and September of 1987. However, the director noted that the applicant submitted birth certificates for her children which showed that one child was born in Mexico on August 12, 1982 and another was born in Mexico on September 16, 1985. These birthdates did not correspond with the absences listed by the applicant. Based on this inconsistency, the director found that the applicant failed to establish eligibility for Temporary Resident Status pursuant to the terms of the CSS/Newman settlement agreements.

On appeal the applicant states that she departed the United States only to give birth to her children. The applicant has submitted copies of photographs, at least one of which was purportedly taken at the applicant's previous place of employment.

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. 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).

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 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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that she resided in the United States for the duration of the requisite period. Here, the applicant has not met her burden of proof.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on January 9, 2006. The applicant submitted the following affidavits and written statement in support of her application:

- An affidavit from [REDACTED] which is not dated. The affiant states that she has known the applicant since May of 1981 and that she has been in touch with the applicant on a weekly basis since that time. The affiant provided little relevant, verifiable information, such as, for example, where the applicant lived and worked during the requisite period. The lack of detail is significant, considering that the affiant claims to have a friendship with the applicant spanning more than 20 years. Due to the lack of probative details, this affidavit will be given only minimal weight as evidence of the applicant’s residence in the United States during the requisite period.
- An affidavit from [REDACTED] dated December 21, 2005. The affiant states that she met the applicant a “long time ago” and claims to have knowledge that the applicant has resided in Los Angeles from October 1980 to the present. Although the dates and place of residence are consistent with information provided by the applicant on her I-687 application, the affidavit lacks details such as the circumstances under which the affiant came to know the applicant or how she dates her initial acquaintance with the applicant. Lacking such relevant detail, the affidavit can be afforded only minimal weight as evidence of the applicant’s residence in the United States during the requisite period.

- An affidavit from [REDACTED] dated December 21, 2005. This is a “fill-in-the-blanks” affidavit and, although the affidavit was signed by the affiant, it appears that the information contained in the affidavit may have been written by the applicant. Specifically, where the affidavit states that the affiant “is able to determine the date of the beginning of (his/her) acquaintance with the applicant from the following fact(s)” the typed response is “[REDACTED] has been knowing [REDACTED] since August 1980 because his brother also my friend since many years ago.” Further this affidavit lacks probative details such as how the affiant came to know the applicant, how he dates his initial acquaintance with the applicant or the nature and frequency of the affiant’s contact with the applicant during the requisite period. Given these deficiencies, this affidavit has little probative value and will be given minimal weight as evidence of the applicant’s residence in the United States during the requisite period.

An affidavit from [REDACTED] dated April 17, 1994. The affiant states that she took the applicant to a bus station and that the applicant departed the country due to a family emergency. The affiant does not state when this trip occurred, and does not claim to have any further knowledge regarding the applicant’s residence in the United States during the requisite period. This affidavit will not be given any weight as evidence of the applicant’s residence in the United States during the requisite period.

- An affidavit from [REDACTED] dated April 11, 1992. The affiant states that the applicant worked for her from February 1983 until November 1987 as a baby sitter. The affidavit lacks details such as the circumstances under which the affiant came to know the applicant or how she dates her initial acquaintance with the applicant. Lacking such relevant detail, the affidavit can be afforded only minimal weight as evidence of the applicant’s residence in the United States during the requisite period.
- An affidavit from [REDACTED] dated June 15, 2001. The affiant claims to have knowledge that the applicant resided at [REDACTED] from June 1980 until the date that the affidavit was signed. This conflicts with the information provided by the applicant on her Form I-687 application in which she listed [REDACTED] Road as her address only from May 1980 until January 1983. This is a material inconsistency which detracts from the credibility of this affidavit. In addition, the affidavit lacks probative details such as the frequency and nature of the affiant’s contact with the applicant during the requisite period. Given these deficiencies, this affidavit will be given only minimal weight as evidence of the applicant’s residence in the United States during the requisite period.
- An affidavit from [REDACTED] dated March 5, 1994. The affiant claims to have knowledge of the applicant’s residence in the United States from 1980 until 1983. The affiant states that she and the applicant worked together at [REDACTED] as housekeepers. This affidavit lacks details such as the circumstances under which the affiant came to know the applicant or how she dates her initial acquaintance with the applicant. Lacking such relevant detail, the affidavit can be afforded only minimal

weight as evidence of the applicant's residence in the United States during the requisite period.

- A letter from [REDACTED] dated May 6, 2005. The letter states that the applicant was employed by [REDACTED] father at a ranch in Acton, California from June 1980 until January 1982. Although this is consistent with the information provided by the applicant on her Form I-687 application, the letter lacks probative details regarding the nature of the applicant's employment or the nature and frequency of [REDACTED] contact with the applicant during the requisite period. In light of these deficiencies this letter has little probative value and will be given minimal weight as evidence of the applicant's residence in the United States during the requisite period.
- A letter signed [REDACTED] dated September 11, 2003. The letter states that the applicant is an active member of St. Agnes Church in Los Angeles, California. The letter does not indicate that the applicant was a member during the requisite period, nor does the author of the letter claim to have personal knowledge of the applicant's residence during the requisite period. Therefore, this letter is not probative of the applicant's residence during the requisite period.

The applicant also submitted a copy of one pay slip which appears to have been issued to the applicant by Production Planners. The pay slip states that it is for the period beginning May 13, 1988. Although this coincides with information provided by the applicant on her Form I-687 application, the date of the pay period covered by the pay slip falls outside the requisite period and is therefore not probative of the applicant's residence in the United States during the requisite period.

As noted above, the applicant also submitted copies of birth certificates for two of her children, both born in Mexico. Specifically, the applicant stated, both on her Form I-687 application and in testimony before an immigration officer, that she departed the United States four times during the requisite period—on January 8, 1982, July 30, 1983, September 10, 1985 and in September of 1987. The applicant testified that she was absent from the United States for one or two weeks following each departure. However, the birth certificates submitted by the applicant show that her daughter, [REDACTED], was born in Mezquitic, Jalisco, Mexico on August 12, 1982 and that her daughter [REDACTED] on September 16, 1985. As noted by the director, the dates on these birth certificates do not correspond to absences listed by the applicant on her Form I-687 application. This inconsistency detracts from the credibility of the applicant's claims. In addition, the birth certificate for [REDACTED] lists the applicant's place of residence as "Rancho Jimulco Jalisco." The fact that the birth certificate lists the applicant as residing in Mexico detracts from the credibility of the applicant's claims and indicates that she was not residing in the United States throughout the requisite period.

In summary, the applicant has not provided sufficient evidence in support of her claim of residence in the United States relating to the entire 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 contradictory information in the record and the applicant's 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.