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U.S. Citizenship
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Services

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FILE:

[Redacted]
MSC 05 011 10325

Office: LOS ANGELES

Date:

SEP 29 2008

IN RE: Applicant:

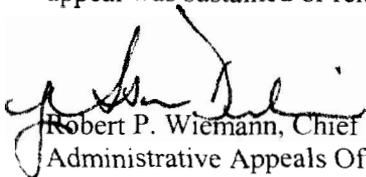


APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a.

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 District Director, Los Angeles. 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 and asserted that the evidence in the record demonstrates her eligibility.

A Form G-28 Notice of Entry of Appearance accompanied the appeal. The applicant, however, did not sign that form. The record contains no indication that the applicant has consented to be represented by counsel.

On July 18, 2008, a representative of this office attempted to contact the applicant's putative counsel at the telephone number he provided. Although no one answered the telephone that representative was able to leave a voice mail. Putative counsel was instructed to return that telephone call but did not. This office will not, therefore, recognize counsel. All representations will be considered, but today's decision will be furnished only to the applicant.

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).

As to the requirement of continuous residence in the United States from January 1, 1982 through the date the application is filed, the regulation at 8 C.F.R. § 245a.2(h)(1) provides that an applicant shall be regarded as having resided continuously if no single absence during the salient period was longer than 45 days and the aggregate of all absences does not exceed 180 days.

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 (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.

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must provide the applicant's address at the time of employment, identify the exact period of employment, show periods of layoff, state the applicant's duties, declare whether the information was taken from company records, and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

On the Form I-687 application, which the applicant signed on September 23, 2004, the applicant stated that she last came to the United States on July 18, 1981. This office notes that the applicant stated, on the Form I-687 application, that she was born on [REDACTED]. On the date the applicant claims to have entered the United States, then, she would have recently had her 15th birthday.

On that form, 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 July 1981 to November 1988, she lived at [REDACTED] 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 September 1981 to June 1987 as a maintenance worker at the Westminster Car Wash System in Westminster, California; and from June 1987 to December 1991 she worked as a maintenance worker at Commercial Cleaning Systems in Garden Grove, California.

The applicant was required, on that application, to provide an exhaustive list of her absences from the United States since January 1, 1982. The applicant stated that her only absence from the United States was from December 1987 to January 1988.

The pertinent evidence in the record is described below.

- The record contains a copy of a Mexican marriage certificate in Spanish and an English translation. Those documents show that the applicant married Hector Tapia-Solis on July 6, 1986 in Atencingo, Puebla, Mexico. This office notes that the applicant stated, on her Form I-687 application, that she was in the United States at that time.

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 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 marriage certificate, which contradicts the applicant's assertion that she was in the United States, casts doubt not only upon that particular piece of evidence and that particular assertion, but on all of the applicant's evidence and all of the applicant's assertions.

- The record contains a letter, dated September 20, 2004, from [REDACTED] of Santa Ana, California. [REDACTED] stated that he was the manager of the Westminster Car Wash System in Westminster, California, and that he is able to verify that the applicant worked there from September 1981 to June 1987. [REDACTED] did not state whether he took that information from company records, or whether records of the applicant's employment exist, or whether such records are available for inspection. [REDACTED] did not state any other basis for his purported knowledge of the months during which the applicant worked for the car wash. Because this employment verification letter does not conform to the requirements at 8 C.F.R. § 245a.2(d)(3)(i), it will be accorded less evidentiary weight than it would have if it conformed to the governing regulation. It will be considered, however, pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).
- The record contains a declaration, dated May 4, 2004, in Spanish, with an English translation, from [REDACTED], of Atencingo, Mexico, who

states that she is the applicant's mother. The declarant stated that the applicant went to the United States on July 18, 1981 and has remained there since.

- The record contains a declaration, dated September 22, 2004, from [REDACTED] of Santa Ana, California. [REDACTED] stated that he first met the applicant "in a party at the park" in Santa Ana, California during July 1981. The declarant further stated that he knows that the applicant lived in the United States from 1982 to 1988 "because I she [sic] invited me to her house to eat and watch movies."
- The record contains a declaration, dated September 23, 2004, from [REDACTED] of Garden Grove, California. [REDACTED] stated that during December 1981, when he was the applicant's brother's coworker, he met the applicant at her brother's house during December 1981. He stated that he continued to see her every time he visited her brother. He further stated that they have been friends for many years now and he sees her almost every day, but did not state how often he saw her during the period of requisite residence.
- The record contains a declaration, dated September 28, 2004, from [REDACTED] of Santa Ana, California. The declarant stated that she first met the applicant during October 1981, at a church in Santa Ana, California. The declarant further stated that "Between 1982 and May 1988 I know the applicant was living in the United States because I used to see her in Church, at the stores."
- The record contains a form affidavit, dated February 12, 1986, from [REDACTED] of Santa Ana, California. [REDACTED] stated that he personally knows that the applicant has been in the United States since July 1986. He further stated that he is able to determine the date of the beginning of his acquaintance with the applicant "because of my friendship with her husband and since then we have kept close contact to this present date." How an affidavit dated February 12, 1986 can attest to the applicant's presence beginning in July 1986 is unclear. In any event, that affidavit does not attest to the applicant's presence in the United States since January 1, 1982.
- The record contains a Form I-817 Declaration signed by the applicant on May 24, 1991. On that form the applicant stated that her relationship, by which she means her marriage, to [REDACTED] was established on July 6, 1986 and she has resided in the United States since July 10, 1986.
- The record contains a Form I-817 Application for Voluntary Departure under the Family Unity Program that the applicant signed on October 23, 1997. On that application the applicant stated that she was married in Mexico on July 6, 1986 and entered the United States on July 10, 1986.
- The record contains a Form I-817 Application for Family Unity Benefits that the applicant signed on May 7, 2002. On that form the applicant stated that she began continuous U.S. residence in July 1986.

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

In the Notice of Decision, dated June 8, 2006, the director observed that the applicant had admitted, on at least two Form I-817 applications, that she began her continuous residence in the United States during July 1986. The director found, therefore, that the evidence in the record does not establish that the applicant entered the United States prior to January 1, 1982 and resided continuously in the United States during the requisite period.

On appeal, the applicant submitted additional photocopies of evidence previously submitted and argued that the evidence demonstrates her eligibility. The applicant stated that she testified at her interview that the person helping her complete her Form I-817 applications told her that she only needed continuous residence in the United States since 1986 and that the unidentified preparer never asked her when she first entered the United States, which the applicant reiterated was during July 1981.

Initially, this office notes that the applicant's October 23, 1987 and May 7, 2002 Form I-817 applications both contain an area in which any person other than the applicant who prepared those forms was to be identified by name, address, and phone number. Neither of those forms indicates that anyone other than the applicant prepared those forms.

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.

On appeal, the applicant appears to be arguing that on her Form I-817 applications she asserted that she had lived in the United States only since 1986, rather than reporting the truth, because that was what was required for eligibility. This raises the suspicion that, on the instant application, she may be claiming to have entered the United States prior to January 1, 1982 because that is an eligibility requirement, rather than because it is true.

On her Form I-687 application the applicant claimed to have been in the United States continuously since July 18, 1981, with the exception of a short absence during December 1987 and January 1988. The applicant's marriage license, however, states that she was married in Mexico on July 6, 1986. The I-817 forms in the record indicate that the applicant entered the United States and has lived in the United States continuously since July 1986, a few days after her marriage. Those various documents convincingly demonstrate that the applicant's residential history as reported on the Form I-687, that she has lived in the United States since 1981, is untrue.

The remaining evidence, one affidavit, four declarations, and an employment verification letter, would otherwise be accorded moderate evidentiary weight, but they are eclipsed by considerably more credible and convincing evidence that the applicant entered the United States no earlier than 1986.

The evidence must be evaluated not by the quantity of evidence alone but by its quality. The absence of sufficiently credible documentation to corroborate the applicant's claim of continuous residence for the entire requisite period detracts from the credibility of her 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 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 on this basis. The applicant was correctly denied on that 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.