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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

L1

[Redacted]

FILE:

MSC-05-186-12376

Office: NEW YORK

Date:

APR 10 2009

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:

[Redacted]

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. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed or rejected, 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.


John F. Grissom
Acting 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 Director, New York. 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 (together comprising the I-687 Application). The director found that the applicant had failed to meet her burden of proving that she entered the United States before January 1, 1982 and had resided continuously in the United States in an unlawful status since that date through the date she filed or attempted to file the application for temporary resident status. The application was denied after the applicant failed to submit additional evidence to explain or resolve the inconsistencies in the evidence relating to her stated entry into the United States in November 1988. Additionally, the director stated in her decision that the applicant did not describe with sufficient detail how she entered the United States through Guatemala and Mexico from Ecuador, and further indicated that the affidavits submitted were not credible.

On appeal, the applicant through her counsel states that she flew from Ecuador to Panama and Guatemala before taking a bus to Mexico. Further, the applicant claims that November 1988 was her last, not first, entry into the United States and also indicates that she cannot produce additional evidence to establish her residence in the United States since 1981. The applicant submits additional evidence to show that one of the affiants, [REDACTED], resided in the United States from before January 1, 1982.

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)(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, "[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 or petition.

The sole issue here is whether the applicant has furnished sufficient credible evidence to establish by a preponderance of the evidence that her entry into the United States was before January 1, 1982 and that her residence in the United States was continuous throughout the requisite period.

A review of the applicant's application for suspension of deportation (Form EOIR-40) filed with the immigration court in 1997 reflects that the applicant listed November 30, 1988 as her first entry into the United States. She testified at the immigration hearing that her first entry to the United States was July 1987. At the conclusion of the hearing, the immigration judge (IJ) found that she had been in the United States since 1988. On appeal, the applicant states that she was referring to her last entry into the United States in November 1988, not her first. This assertion is not probable, given that the applicant listed her first residence in the United States in November 1988 on the Form EOIR-40, and that most of the evidence submitted in support of the application related to years after

1988. Further, a review of the applicant's Forms I-687 filed in 1991 and 2005 both do not show any absence from the United States in 1988. The applicant also did not mention any exit in 1988 during her interview. The inconsistencies in the record concerning this matter seriously affect her credibility.

The applicant submitted a number of various documents including a doctor's note, photocopies of her individual income tax returns filed from 1990 through 2004, employment letters from [REDACTED], and [REDACTED], a lease agreement, rent receipts, money order receipts, money transfer receipts, and telephone bills in support of her Form I-687 and Form EOIR-40. None of these documents relates to the requisite period, and thus will not be considered.

Further, the applicant submitted photocopies of several envelopes with postal stamps addressed to the applicant in the United States. Upon review, the AAO finds that the envelopes with postal stamps are not probative as evidence of the applicant's residence in the United States during the requisite period because the dates are illegible.

The applicant also submitted seven affidavits from her friends. The affidavits from [REDACTED], [REDACTED], and [REDACTED] all claim to have known the applicant after the requisite period, and thus will not be considered.

[REDACTED] and [REDACTED] in their affidavits state that they have known the applicant since her entry into the United States in 1981. No concrete information, however, is offered by any of the affiants above to indicate that their relationships with the applicant began in 1981. [REDACTED] claims that the applicant resided with him as a tenant from 1981 to 1988 but does not describe her living situation, the rental agreement, or submit contemporaneous documents. To be considered probative and credible, witness affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged.

[REDACTED] states that she has known the applicant in the United States since 1981 but provides no detail about their claimed relationship. The director noted in the notice of intent to deny (NOID) that the affiant's statement that she has known the applicant in the United States since 1981 was not credible because according to United States Citizenship and Immigration Service (USCIS) records, the affiant did not come to the United States until July 1984. No further proof has been submitted to reconcile this inconsistency. 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. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the application. *Id.* at 591.

██████████ in his affidavit states that he has known the applicant since before the applicant came to the United States in 1981, and that his friendship with the applicant continued after the applicant came to the United States in 1981. In denying the application, the director noted that based on USCIS records, ██████████ came to the United States in March 1993 and thus, could not have had knowledge of the applicant's residence in the United States since 1981. On appeal, the applicant submits evidence of ██████████ residence in the United States in 1979 and from 1981 to 1982. While he established his own residence in the United States during these years, ██████████ fails to state with specificity where the applicant resided in the United States during the requisite period, how he first met the applicant in the United States, how he dated his acquaintance with the applicant, how often he talked or met with the applicant during the requisite period, or provide other details about the relationship. Because the affidavit lacks detail, it has only minimal weight as evidence of the applicant's continuous residence in the United States during the requisite period.

██████████ in her affidavit states that the applicant worked as a "floor girl for our factory" at New York Fashions from December 1981 to November 1988. This affidavit has minimal probative value, however, because the affiant fails to include specific details about the applicant's employment as prescribed by the regulations at 8 C.F.R. § 245a.2(d)(3)(i). Specifically, the affiant fails to provide information about where the applicant resided at the time of employment, what her specific duties with the company were, whether or not the information was taken from official company records, and where such records are located and whether USCIS may have access to the records. Moreover, the affiant fails to state her title or position in the company.

Upon review, the AAO finds that, individually and together, the affidavits do not indicate that their assertions are probably true. Therefore, they have little probative value.

The absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period as well as inconsistencies noted in the record, seriously detract 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 lack of credible supporting documentation and inconsistencies in the record, it is concluded that the applicant has failed to establish by a preponderance of the evidence that she has continuously resided in an unlawful status in the United States for the requisite period 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.

Beyond the decision of the director, the applicant is inadmissible, and thus ineligible for temporary resident status. Based on the record, on October 20, 1998, an immigration judge (IJ) denied the applicant's request for suspension of deportation under section 240A(b) of the Act and ordered the applicant to voluntarily depart the United States within three months of the date

of the decision with an alternate order of deportation should the applicant fail to depart as required. The applicant failed to leave the United States. Thus, the applicant is inadmissible to the United States as an alien previously removed and who seeks readmission before spending the requisite time period outside the United States. Section 212(a)(9) of the Act; 8 U.S.C. § 1182(a)(9). Although the applicant's inadmissibility may be waived "for humanitarian purposes, to assure family unity or when it is otherwise in the public interest," pursuant to Section 245A(d)(2)(B)(i) of the Act; 8 U.S.C. § 1255a(d)(2)(B)(i); 8 C.F.R. § 245a.18(c), the applicant has not obtained a waiver of inadmissibility. For this additional reason, the application may not be approved.

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