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U.S. Citizenship  
and Immigration  
Services

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FILE:

MSC-05-249-13253

Office: LOS ANGELES

Date:

**AUG 07 2009**

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:

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, 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 (together comprising the I-687 Application). On May 16, 2006, the director concluded that the applicant had never been discouraged from filing the application during the original legalization period and determined that the applicant was not a class member and thus, ineligible for the benefit sought. The director also denied the application after she identified multiple inconsistencies in the evidence of record.

Counsel for the applicant appealed the director's denial to the AAO, claiming that the director violated the CSS/Newman Settlement Agreement in that she failed to issue a notice of intent to deny (NOID) before rendering her notice of decision (NOD) and to apprise the applicant of the perceived deficiencies in the application. In adjudicating the appeal, the AAO found that it did not have authority to adjudicate the matter involving the applicant's lack of class membership and remanded the appeal to the director.

On July 27, 2007, the director denied the application, finding that none of the evidence submitted was credible to establish the applicant's continuous residence in the United States since January 1, 1982.

On the second appeal, counsel for the applicant maintains that the director violated the CSS/Newman Settlement Agreement when he failed to issue a NOID and give the applicant an opportunity to clarify or explain any perceived deficiencies in the application prior to rendering his final decision. Further, counsel contends that the applicant has submitted sufficient credible evidence to support and substantiate her claim of continuous residence in the United States since before January 1, 1982 and throughout the requisite period.

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.

On the second appeal, counsel claims that the director should have issued a NOID before rendering his final decision. Under the CSS/Newman Settlement Agreements, if the director finds that an applicant is ineligible for class membership, the director must first issue a NOID, which explains any perceived deficiency in the applicant’s Class Member Application and provide the applicant 30 days to submit additional written evidence or information to remedy the perceived deficiency. Once the applicant has had an opportunity to respond to any such notice, if

the applicant has not overcome the director's finding then the director must issue a written decision to deny an application for class membership to both counsel and the applicant, with a copy to class counsel. The notice shall explain the reason for the denial of the application, and notify the applicant of his or her right to seek review of such denial by a Special Master. *See* CSS Settlement Agreement paragraph 8 at page 5; Newman Settlement Agreement paragraph 8 at page 7.

Here, unlike the 2006 denial notice, the director treated the applicant as a class member and denied the application solely because the applicant had failed to submit credible evidence. Thus, the director was not obligated under CSS/Newman Settlement Agreement to issue a NOID prior to rendering his final decision.

The only issue in this proceeding is whether the applicant has furnished sufficient credible evidence to meet her burden of proving by a preponderance of the evidence that she entered the United States before January 1, 1982 and has thereafter resided continuously in the United States until the date of filing the application.

To show that she has resided in the United States continuously throughout the requisite period the applicant provided 15 letters and witness statements. She also submitted numerous photocopies of various pictures claimed to have been taken in the United States at various times during the requisite period.

The director states in his decision that none of the pictures submitted has evidentiary weight as evidence of the applicant's continuous residence or presence in the United States during the requisite period. According to the director, other than the applicant's own handwriting showing the dates when they were taken, these photos contain no information that United States Citizenship and Immigration Services (USCIS) can use to determine when and where they were taken. The AAO agrees. The photos have minimal probative value.

the pastor of Holy Spirit Catholic Church, indicates that he has known the applicant since January 1982. He further states that the applicant regularly participated in various youth activities at St. John of God Church in 1984.

the pastor of Saint John of God Church, claims that the applicant has been an active member of Saint John of God Church for more than 21 years. Both and fail to offer specific details about the applicant's membership as prescribed by the regulations at 8 C.F.R. § 245a.2(d)(3)(v). They both fail to include the inclusive dates of the applicant's membership, the address or addresses where the applicant resided during her membership period, how they both know the applicant, and where they acquired the information relating to the applicant's membership in the church. Further weakening the probative value of the statements is the applicant's failure to list her membership in or affiliation with Saint John of God Church at part #31 of her Form I-687 application.

The statement from does not relate to the applicant and is irrelevant.

stated in her May 2005 declaration that she first met the applicant in 1981 at a mutual friend's house. She further claimed to have employed the applicant as a secretary in her business soon after she met the applicant in 1981. When contacted by USCIS on May 16, 2006, [REDACTED] stated that she first met the applicant in 1980 and that she hired the applicant to be her secretary from March 1981 to March 1991. [REDACTED] also indicated that the applicant lived in her home and attended night school during the requisite period and that she briefly left the United States at the end of 1988 to visit her ill grandfather in Mexico. [REDACTED] claimed in her June 2006 sworn statement that some of the information she provided earlier was erroneous. She then stated that the applicant had never attended school during the requisite period and that she briefly left the United States in January 1988. [REDACTED] explained she gave wrong information earlier because she confused the dates and facts about the applicant's life with her own and her daughter's. The director noted in his decision that since [REDACTED] had provided inconsistent information about the applicant's life and activity in the United States during the requisite period, she was not credible and her sworn statement not probative as evidence of the applicant's continuous residence in the United States since before January 1, 1982.

On appeal, counsel for the applicant contends that [REDACTED] has provided a credible explanation to resolve the inconsistencies in her statements. The AAO disagrees. In the 2005 statement, [REDACTED] claimed to have met the applicant in a mutual friend's house in 1981. However, [REDACTED] indicated in her 2006 declaration that she first met the applicant at her house in 1981. When contacted by USCIS, [REDACTED] stated she first met the applicant in 1980. She also fails to provide specific information as prescribed by the regulations at 8 C.F.R. § 245a.2(d)(3)(i) pertaining to the applicant's employment in the United States during the requisite period. Specifically, [REDACTED] fails to indicate whether or not the information about the applicant's employment was taken from official company records, where such records are located, and whether USCIS may have access to the records. No corroborating evidence such as pay stubs or other accounting records have been submitted to support the assertion that the applicant worked for [REDACTED] during the requisite period.

[REDACTED] states in her signed statement that she and the applicant came to the United States together and that they lived in a same place for three months in the United States. In the same statement, [REDACTED] claims she knows the applicant entered the United States illegally because the applicant has informed her about it. The signed statement contains conflicting information about how the applicant entered the United States and will be given no weight.

The remaining witness statements generally state that the declarants have known the applicant since 1981, 1984, or 1985. All claim to have first met the applicant at church; however none describes with sufficient detail how he or she first met the applicant, how often he or she met and talked with the applicant during the requisite period, or whether he or she has direct personal knowledge of where the applicant resided and worked in the United States during the entire requisite period. Simply stating that the applicant lived continuously in the United States for a period of time without providing any detail about the events and circumstances of the applicant's

life in the United States during the requisite period does not establish the reliability of the assertions and does not establish her continuous residence in the United States since before January 1, 1982. 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. Because these affidavits lack relevant detail, they have only minimal weight as evidence of the applicant's residence in the United States throughout the requisite period. Considered individually and together, the evidence submitted does not establish by a preponderance of the evidence that the applicant has resided in the United States continuously throughout the requisite period.

The lack of detail in the record and the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period 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 inconsistencies in the witness statements and the lack of credible supporting documentation, 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.

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