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U.S. Citizenship  
and Immigration  
Services

21

FILE:

MSC 06 032 13327

Office: NEW YORK

Date: FEB 04 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. 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.

  
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. The director determined that the applicant had not established by a preponderance of the evidence that she had continuously resided in the United States in an unlawful status for the duration of the requisite period, and that the evidence submitted by her did not establish her eligibility for the immigration benefit sought. The director denied the application, finding that the applicant had not met her burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements. Specifically, the director noted that the applicant did not respond to a Notice Of Intent To Deny (NOID) and denied the application for the reasons set forth in the NOID. In the NOID, the director stated that school records submitted by the applicant were verified and that the applicant's residence since at least September 16, 1983 had been documented. The director stated that the applicant should provide telephone numbers for the affidavits provided in support of the application so that they could be verified. The director stated, as previously noted, that the applicant did not reply to the NOID and accordingly denied the application.

On appeal, the applicant submitted an affidavit, copies of documents submitted in response to the NOID, proof that those documents had been received by Citizenship and Immigration Services (CIS), a copy of an April 5, 2006 appointment notice, and requests for applications of replacement nonimmigrant arrival documents. The applicant asks that her application be approved.

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 245(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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

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).

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 petitioner 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 (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. The record contains the following evidence which is material to the applicant’s claim:

- A sworn statement from the applicant’s mother, [REDACTED], wherein the witness states that the applicant “has been residing in this country of the United States upon arrival on September 17, 1981. She currently lives here.” The witness does not state that the applicant continuously resided in the United States for the duration of the requisite period.
- A notarized statement from [REDACTED] (the applicant’s aunt) wherein the witness states that the applicant arrived in the United States on September 17, 1981 accompanied by her

grandmother. The witness states that from the date of the applicant's arrival until her 18<sup>th</sup> birthday, she resided with her mother.

- A notarized statement from the applicant's grandfather, \_\_\_\_\_ wherein he states that: the applicant was born February 21, 1977 in the State of Antigua and Barbuda; the applicant lived with the witness until September 17, 1981 when she went to the United States to live with her mother \_\_\_\_\_, who supported and maintained her until adulthood.

#### Applicant's Sworn Statements

- The applicant submitted a sworn statement dated April 17, 2007 wherein she stated, in pertinent part, that she entered the United States prior to her 5<sup>th</sup> birthday (DOB: February 21, 1977) accompanied by her sister and grandmother. The applicant was told by her mother that her date of entry into the country was September 17, 1981. In a notarized statement dated October 14, 2005, the applicant states that her parents were granted amnesty in 1987, but that she was not included in the application even though she was in the custody of her parents.

#### Other Evidence

- The applicant submitted school records, which were verified by CIS, which indicate that the applicant attended school in New York during the requisite period in the following years: 1983; 1984; 1985; and 1988.

The documentation that the applicant submits in support of her claim to have arrived in the United States before January of 1982 and lived in an unlawful status during the requisite period consists of the applicant's personal statement, three witness statements and school records. The record of proceeding contains no additional evidence supporting the applicant's claim of unlawful residence in the United States during the requisite time period.

As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. The witness statements provided do not provide details of witnesses' association or relationship with the applicant, or detailed accounts of an ongoing association establishing a relationship under which the witnesses could be reasonably expected to have personal knowledge of the applicant's residence, activities and whereabouts during the requisite period covered by the applicant's Form I-687. To be considered probative, witness statements must do more than simply state that a witness knows an applicant and that the applicant has lived in the United States for a specific time period, or that the witness is a family member of the applicant. The statements must contain sufficient detail, generated by the asserted contact with the applicant, to establish that a relationship does in fact exist, how the relationship was established and sustained, and that the witness does, by virtue of that relationship, have knowledge of the facts asserted. The witnesses simply state that the applicant traveled to the United States in 1981 and continued to reside there thereafter. They do not provide details about the applicant's places of residence or activities during

the requisite period. In fact, the applicant provides no information about her places of residence on the Form I-687 prior to June of 1992.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously 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 applicant's reliance upon documents with minimal probative value it is concluded that the evidence submitted fails to establish continuous residence in an unlawful status in the United States during the requisite period. Doubt is also cast upon the applicant's claim of continuous residence during the requisite period by the fact her mother applied for and was granted amnesty in 1987, but that the applicant, a minor child in the custody of her mother as stated by the applicant, was not included in the application. The applicant states, without providing further detail, that she was not included in her mother's amnesty application "out of spite." The school records submitted by the applicant indicate that the applicant did not attend school in the United States in 1986 or 1987 (with 1987 being the year the applicant's mother was granted amnesty) and the only evidence of the applicant's residence during those two years come from witness statements which lack sufficient detail to be considered probative or credible.

Therefore, based upon the foregoing, 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.