



U.S. Citizenship  
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FILE: [REDACTED]  
MSC-06-091-11835

Office: LOS ANGELES

Date: FEB 06 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:

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. 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). The director denied the application, finding that the applicant had failed to meet her burden of proof by a preponderance of the evidence that she resided continuously in the United States throughout the requisite period. The director also found the applicant inadmissible pursuant to Section 212(A)(6)(C) of the Act, and thus ineligible for the benefit sought.

On appeal, the applicant asserts that she has resided continuously in the United States since 1981. The applicant further states that she attempted to file the application for temporary resident status in Los Angeles, California, during the original legalization period but were told that she was not eligible since she had traveled to Mexico between 1980 and 1987. No additional evidence is submitted on appeal.

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 periods, 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.

At issue here is whether the applicant has met her burden of proving by a preponderance of the evidence that she entered the United States before January 1, 1982 and has resided continuously in the United States in an unlawful status since such date and through the date she filed or attempted to file her application for temporary resident status.

During the interview with a United States Citizenship and Immigration Service (USCIS) officer on November 21, 2006, the applicant stated that she has resided in the United States continuously since October 1981, when she and her husband, [REDACTED], first entered the United States. The applicant further claimed that she attempted to file the application for temporary resident status in September 1987, but her application was denied because she had traveled outside the United States in that same month for two weeks.

As evidence of her continuous residence in the United States since October 1981, the applicant submitted a photocopy of her child's birth certificate; a declaration from her sister, [REDACTED], and five affidavits from people who have known her since 1981.

The birth certificate shows that [REDACTED] born on January 25, 1984 in the United States, is the daughter of the applicant. Upon review, the AAO determines that the birth certificate is probative to show the applicant's presence in the United States in 1984, but by itself, the birth

certificate is not evidence of the applicant's continuous residence in the United States throughout the entire requisite period.

In her declaration, [REDACTED] states that the applicant is her sister and has lived in the United States since October 1981. [REDACTED] claims that the applicant came to the United States to live with her at [REDACTED] in Los Angeles, California. [REDACTED] further indicates in her declaration that she accompanied her sister, the applicant, to file the application for the amnesty program in September 1987. However, the record reflects that during an interview with a border patrol agent on February 15, 2003, the applicant stated that she was in Mexico during the original legalization period and when she returned to the United States, the amnesty program had been ended. 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. Here, no explanation is given or evidence submitted to reconcile the inconsistencies between [REDACTED]'s declaration and the evidence of record; and for this reason, her declaration has minimal probative value as evidence of the applicant's continuous residence in the United States throughout the requisite period.

All five affiants in this case claim to have known the applicant and her husband since 1981; however, none of the witness statements provide concrete information, specific to the applicant and generated by the asserted associations with him, which would reflect and corroborate the extent of those associations and demonstrate that they have a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the affidavits. 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. Upon review, the AAO finds that, individually and together, the witness statements 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 and lack of detail 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.

On two separate occasions, the applicant was found inadmissible to the United States. According to the record, in 2001, the applicant falsely presented herself as a United States citizen to gain admission into the United States in violation of section 212(a)(6)(C)(ii), 8 U.S.C. § 1182(a)(6)(C)(ii). She was summarily removed from the United States on February 11, 2001. The record indicates that in 2003, the applicant presented a fraudulent document to gain entry into the United States in violation of section 212(a)(6)(C)(i), 8 U.S.C. § 1182(a)(6)(C)(ii). She was again summarily removed on February 15, 2003. She was prohibited from entering, attempting to enter, or being in the United States for a period of 20 years from the date of her departure (February 15, 2003) unless she obtains permission to reenter the United States. Because she reentered the United States after her second removal without prior permission, she is inadmissible. Section 212(a)(9)(A)(i), 8 U.S.C. § 1182(a)(9)(A)(i). The applicant is not eligible for permanent resident status for this additional reason.

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