

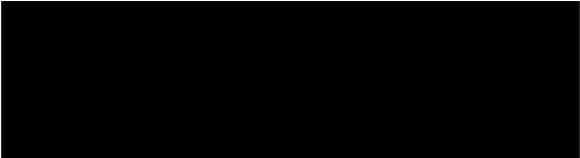
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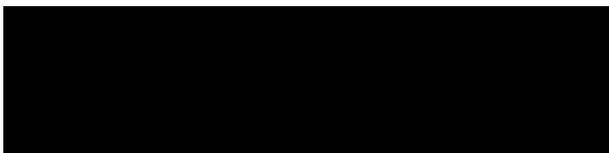
Office: LOS ANGELES

Date: **FEB 17 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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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, or *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, and 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 to United States Citizenship and Immigration Services (USCIS). The director denied the application, finding that the applicant had failed to meet her burden of proving by a preponderance of the evidence that she entered the United States before January 1, 1982 and had resided continuously in the United States in an unlawful status throughout the requisite period. Specifically, the director noted that the evidence submitted is not credible to establish eligibility for the benefit sought.

On appeal, the applicant submits a declaration in which she asserts that she has maintained continuous unlawful residence in the United States since 1975 as evidenced by numerous documents that she had previously submitted along with her application including pay stubs, photocopies of her driver's license issued by California Department of Motor and Vehicle (DMV) in 1975 and renewed until 2010, and affidavits from people who have known her since 1980.

On December 17, 2008, the AAO mailed a request for additional evidence (RFE) to the applicant, requesting her to furnish additional documentation within fifteen days. On December 29, 2008, the applicant mailed the additional documentation as requested and additionally, promised to submit an official printout from California DMV showing all of the years she has had a driver's license in California. More than 30 days have passed since the applicant promised to mail an official printout from California DMV. The record is deemed complete since as of today this office has not received any printout from 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 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 her continuous unlawful residence in the United States since before January 1, 1982 through the date she filed or attempted to file the application for temporary resident status.

On appeal, the applicant asserts that she has resided and worked in the United States continuously since 1975. As evidence, the applicant submitted numerous documents such as pay stubs and checks made payable to her from 1975 to 1986; clear photocopies of her driver's license issued by California DMV continuously every four years from 1975 to 1987 and from 1993 to 2010; and a certified printout of FICA earnings from Social Security Administration showing her income from 1975 to 1987 and from 1987 to 2007.

Upon review, the AAO determines that the documents submitted above are relevant, credible, and probative as evidence that the applicant resided and worked in the United States continuously from 1975 to 1987, but are insufficient to establish continuous residence in the United States throughout the entire requisite period.

In an attempt to show continuous residence in the United States throughout the entire requisite period, the applicant submitted six affidavits from people who claim to have known her during the requisite period. With respect to affidavits, quality, not quantity, of evidence is the decisive factor in the search for the truth. The contents of the affidavits must be assessed and the quality of the evidence determined. *Matter of E-M-*, *supra* at 80. Affidavits containing specific, personal knowledge of the applicant's whereabouts during the time period in question have greater weight than fill-in-the-blank affidavits providing generic information.

██████████ and ██████████ in their affidavits both claimed to have first met the applicant in 1979, when ██████████ worked at ██████████. Both ██████████ stated that they socialize with the applicant frequently since the applicant, at one point in time, was their next door neighbor. On the other hand, ██████████ and ██████████ stated that they first met the applicant at Jehovah Witness Kingdom Hall in Oxnard, California in 1982. The applicant regularly attended the Jehovah Witness religious service according to the Barragans. Additionally, they indicated that the applicant was a guest at their wedding on January 11, 1986.

Viewed individually and within the totality of the evidence, none of the affiants above describe with sufficient detail where the applicant resided during the critical time period, specifically between 1987 and 1988. Their assertions about the applicant's presence in the United States such as "I frequently socialize with ██████████ (the applicant)" or "We saw her (the applicant) at our weekly religious service at Jehovah Witness Kingdom Hall in Oxnard, California" without specific detail identifying when, where, and how often they met and talked with the applicant are not persuasive as evidence of the applicant's continuous residence in the United States for the duration of the entire requisite period.

██████████ and ██████████ both noted that the applicant lived at their family's home between 1982 and 2002. In their affidavits, the Oleans stated that they live at ██████████ in Oxnard, California. A review of the applicant's Form I-687, however, reveals that the applicant lived at ██████████ Oxnard, California from 1982 to 1991 and at ██████████ Oxnard, California from 1991 to 1997. 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. No explanation has been given or evidence submitted to reconcile the inconsistencies between the ██████████ affidavits and the applicant's Form I-687 regarding the applicant's residence between 1982 and 2002; and for this reason, the ██████████ affidavits have minimal probative value as evidence of the applicant's continuous residence in the United States throughout the requisite period.

Moreover, the applicant states in her personal declaration that she began to work for ██████████ as her care taker in 1986 for 11 years. However, in connection with her application for adjustment of status, the applicant stated during her interview with an immigration officer on July 3, 2002 that she worked for ██████████ from January 1993 to February 1999. Consistent with her testimony, the applicant listed an employment with ██████████ from 1993 to 1999 at her Form G-325A that she submitted in connection with her adjustment of status application. The inconsistencies between the

applicant's declaration and the evidence of record regarding her employment with [REDACTED] raise some doubts about her claim that she continuously resided in the United States during the entire requisite period.

As stated above, the burden is upon the applicant to establish by a preponderance of the evidence that she entered the United States before January 1, 1982 and has continuously resided in the United States in an unlawful status since such date until she filed or attempted to file an application for temporary resident. The burden is met when, based on relevant, probative, and credible evidence, the applicant's claim is probably true. Upon review of the evidence, the AAO finds that although the applicant has submitted credible evidence to show continuous residence in the United States from 1975 to 1987, she has failed to establish by a preponderance of the evidence that her residence in the United States is continuous throughout the entire requisite period.

The absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period and inconsistencies noted above 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 duration of the entire 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.

A review of the applicant's record further reveals that she was arrested and charged with an attempted entry into the United States with a counterfeit document on October 18, 1980, which resulted in her deportation on that day. The record also reflects that on February 21, 2001, [REDACTED], on the applicant's behalf, filed a Form I-140, Immigrant Petition for Alien Worker. On January 8, 2002, the petition was approved, and the applicant then filed her application to adjust her status to that of a permanent resident on January 18, 2002. According to the record, on February 22, 2003, the applicant filed an application for permission to reapply for admission into the United States after deportation on Form I-212. This application was granted on December 7, 2004, and the applicant's inadmissibility due to her 1980 arrest was waived, but because of her unlawful presence in the United States for more than one year after her reentry into the United States in 1993, her adjustment of status was denied. At her adjustment of status interview on July 3, 2002, the applicant admitted that she had never worked for [REDACTED].

Beyond the decision of the director, the AAO determines that the applicant is inadmissible for trying to obtain a permanent resident status by fraud or willfully misrepresenting a material fact in violation of Section 212(a)(6)(C)(i) of the Act; 8 U.S.C. § 1182(a)(6)(C)(i). Thus, the applicant is ineligible for the benefit sought for this additional reason. Although a discretionary waiver of inadmissibility is available "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 application for a waiver needs not be submitted and/or considered since the application for temporary resident status has been denied for reasons stated above.

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