identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

L1

JAN 13 2009

FILE: [redacted] Office: LOS ANGELES Date:
MSC 06-101-15009

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. 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, 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 Act, and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, on January 9, 2006. The director denied the application on March 23, 2007, after determining 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. The director noted that on January 29, 2007, the applicant was issued a Request for Evidence (RFE), (Form I-72); asking the applicant to submit as evidence further proof of her residence, an official print out from Internal Revenue Service (IRS), and a Statement from the Social Security Administration (SSA) for the years 1982 to 1988. The director further noted that the applicant responded to the RFE by submitting affidavits from affiants who only stated that they had known her prior to 1982; and that she failed to provide the IRS or SSA print outs as requested. The director denied the application, finding that the applicant had not met his burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, the applicant states that she has resided in the United States since 1981, and that because she was paid in cash for her work and paid her bills in cash, she has no receipts for any of the bills. She further states that she felt pressured and confused during her immigration interview and offers her apologies for any misunderstanding. She resubmits copies of affidavits and states that they are sufficient to prove her eligibility.

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) 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.

*See* 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).

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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet her burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687 Application and Supplement to United States Citizenship and Immigration Services (USCIS) on January 9, 2006.

The applicant submitted the following attestations as evidence of her residence during the requisite period:

- An affidavit from , and in which they stated that they have personally known the applicant to be present in the United States since July 1980 and that the applicant babysat for the family until 1987 at in Los Angeles, California.

- An affidavit from Inocencio in which he stated that he first met the applicant in Mach of 1981 and that she met the applicant at house where the applicant was a babysitter. She also stated that she and the applicant are good friends and that she would talk with her whenever she visited with

- An affidavit from in which she stated that she has known the applicant in the United States since August of 1980 and that the applicant was the babysitter at her cousin s home located at in Los Angeles. She also stated that she and the applicant have become friends since her children often played together at house.

- An affidavit from in which she stated that she has known the applicant since 1980 and that they have continued to be friends.

- A declaration from in which she stated that the applicant arrived in the United States in 1980 which was at a time when she was renting a room from the applicant's sister. She also stated that she and the applicant have become good friends.

The declarations from and are lacking in detail in that the declarants fail to specify the applicant's place of residency or the frequency with which they saw and communicated with the applicant during the requisite period. The affiants , and , fail to specify the nature of their relationship with or their knowledge of the applicant's whereabouts or circumstances of her residency subsequent to 1987. They have also failed to submit any independent documentation to support their claims of the applicant's employment. The affiants and fail to specify the frequency with which they saw and communicated with the applicant during the requisite period. Because the attestations are lacking in detail, they can be accorded only minimal weight in establishing the applicant's residency in the United States for the duration of the requisite period.

In denying the application the director noted that the applicant had failed to comply with the RFE request for evidence.

On appeal, the applicant reasserts her claim of eligibility for temporary resident status and submits affidavits already contained in the record of proceeding.

In the instant case, the applicant has failed to provide sufficient, probative evidence to establish her continuous unlawful residence in the United States since prior to January 1, 1982, and

throughout the requisite period. She has failed to overcome the issues raised by the director and the attestations submitted are lacking in detail.

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 this 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 failure to comply with the director's request for evidence and her reliance upon documents that are lacking in detail and probative value, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States for the requisite period 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.