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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

L₁



FILE:

MSC-05-244-15443

Office: LOS ANGELES

Date: JAN 29 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:

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.

A handwritten signature in black ink, appearing to read "John F. Grissom".

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. 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. Specifically, the director noted several inconsistencies and insufficiencies in the evidence that diminished the credibility of the application. 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.

On appeal, the applicant provides further details regarding the evidence previously submitted with the application. She asserts that the evidence that she has submitted is sufficient to establish her eligibility for the benefit sought.

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)(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).

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 documentation that the applicant submits in support of her claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of several affidavits and letters; a copy of the applicant’s passport; a copy of the applicant’s California identification card issued in 1983, copies of two student identification cards from 1978-1980, California Nurses Assistance certification from 1983, and various undated photos. Some of the evidence submitted indicates that the applicant resided in the United States after May 4, 1988; however, because evidence of residence after May 4, 1988 is not probative of residence during the requisite time period, it shall not be discussed. The AAO has reviewed each document in its entirety to determine the applicant’s eligibility; however, the AAO will not quote each witness statement in this decision.

The record contains an employment letter, signed by [REDACTED], in which the declarant indicates that the applicant was employed by the company from 1988 until 1993. This letter fails to meet certain regulatory standards set forth at 8 C.F.R. § 245a.2(d)(3)(i), which provides that letters from employers must include the applicant’s address at the time of employment; exact period of employment; whether the information was taken from official company records and where records are located and whether CIS may have access to the records; if records are

unavailable, an affidavit form-letter stating that the employment records are unavailable may be accepted which shall be signed, attested to by the employer under penalty of perjury and shall state the employer's willingness to come forward and give testimony if requested. Since the letter does not include much of the required information, it can be afforded minimal weight as evidence of the applicant's residence in the United States for the duration of the requisite period.

The record contains a California identification card issued to the applicant in 1983, two student identification cards from 1978-1980, and undated photos. On appeal, the applicant explains that the photos were taken in her brother's home and at a factory in Los Angeles where she previously worked. She provides no additional evidence to corroborate her testimony.

The record also contains an affidavit from [REDACTED] who the applicant later identifies as her brother. In this affidavit, the affiant indicates that he has personal knowledge of the applicant's residence in the United States from 1978-1988. He indicates that the source of his knowledge is "drivers license, check-stubs and school records." Although the affiant states that he has known the applicant since before January 1, 1982, his statements do not supply enough details to lend credibility to an at least 24-year relationship with the applicant. For instance, the affiant does not indicate how he dates their initial meeting with the applicant, how frequently he had contact with the applicant, or how he had personal knowledge of the applicant's presence in the United States. Further, the affiant does not provide information regarding where the applicant lived during the requisite period. Given these deficiencies, this affidavit has minimal probative value in supporting the applicant's claim that she entered the United States prior to January 1, 1982 and resided in the United States for the entire requisite period.

The record also contains a copy of a California Nurse Assistant certificate dated May 1983. On appeal, the applicant indicates that she used this certificate when she worked in a nursing home. She does not indicate when she was employed there, nor does she list this employment on her Form I-687 application when asked to list all employers during the relevant period.

Finally, the director noted in the denial that the applicant gave birth to a daughter on December 18, 1981 in Mexico. While the applicant claims that she was in Mexico for one month during 1981, the registration of the birth certificate, which contains the applicant's signature, is dated February 10, 1982.¹ This period, from December 18, 1981 until February 10, 1982, exceeds the forty-five day allowance for absences from the United States, thus making the applicant ineligible for the benefit sought. On appeal, the applicant indicates that her absence was actually for three months, not one month as she previously stated, thereby supporting the director's finding that she was not eligible for temporary residence due to her absence from December 1981 until at least February 1982.

¹ The AAO additionally notes the birth of a daughter to the applicant in Mexico on July 11, 1985. The applicant's Form I-687 does not indicate this absence from the United States during the requisite period.

Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that she is eligible for the benefit sought.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that she entered the United States before January 1, 1982 and 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.