



U.S. Citizenship  
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FILE: [REDACTED]  
MSC-04-336-11355

Office: LOS ANGELES

Date:

JUN 04 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. 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 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 that the applicant was admitted to the United States in B-2 visitor status in June 1981. The director noted that the applicant's visa was valid for multiple entries. She concluded that the applicant was likely in valid nonimmigrant status prior to January 1, 1982 and therefore not eligible for adjustment to temporary resident status. Accordingly, since the applicant was in the United States in lawful status during the relevant period, the director denied the application on April 19, 2007.

On appeal, the applicant asserts that United States Citizenship & Immigration Services (USCIS) erred in finding that the applicant failed to prove that she was in unlawful status in the United States prior to January 1, 1982 in a manner known to the government. She asserts that she violated her lawful status in two ways: 1. by working without employment authorization during the relevant period and, 2. by overstaying her B-2 visa. She asserts that her lawful nonimmigrant status expired after six months, on December 27, 1981, thus causing her to be a B-2 overstay, in unlawful status on that day. She does not assert, however, that her unlawful status was in any way known to the government prior to January 1, 1982.

Preliminarily, the AAO notes that the director adjudicated the application on the merits and presumptively found the applicant eligible for class membership under the terms of the CSS/Newman Settlement Agreements. On September 9, 2008 the court approved a Stipulation of Settlement in the class action *Northwest Immigrant Rights Project, et al vs. USCIS, et al*, 88-CV-00379 JLR (W.D. Was.) (NWIRP). Class members are defined, in relevant part, as:

1. Class Members [include] all persons who entered the United States in a nonimmigrant status prior to January 1, 1982, who are otherwise *prima facie* eligible for legalization under § 245A of the INA [Immigration & Nationality Act], 8 U.S.C. § 1255a, who are within one or more of the Enumerated Categories described below in paragraph 2, and who –

(A) between May 5, 1987 and May 4, 1988, attempted to file a complete application for legalization under § 245A of the INA and fees to an INS officer or

agent acting on behalf of the INS, including a Qualified Designated Agency (“QDE”), and whose applications were rejected for filing (hereinafter referred to as ‘Subclass A members’); or

(B) between May 5, 1987 and May 4, 1988, attempted to apply for legalization with an INS officer, or agent acting on behalf of the INS, including a QDE, under § 245A of the INA, but were advised that they were ineligible for legalization, or were refused legalization application forms, and for whom such information, or inability to obtain the required application forms, was a substantial cause of their failure to file or complete a timely written application (hereinafter referred to as ‘Sub-class B’ members); or

(C) filed a legalization application under INA § 245A and fees with an INS officer or agent acting on behalf of the INS, including a QDE, and whose application

- i. has not been finally adjudicated or whose temporary resident status has been proposed for termination (hereinafter referred to as ‘Sub-class C.i. members’),
- ii. was denied or whose temporary resident status was terminated, where the INS or CIS action or inaction was because INS or CIS believed the applicant had failed to meet the ‘known to the government’ requirement, or the requirement that s/he demonstrate that his/her unlawful residence was continuous (hereinafter referred to as ‘Sub-class C.ii members’).

2. Enumerated Categories

- (1) Persons who violated the terms of their nonimmigrant status prior to January 1, 1982 in a manner known to the government because documentation or the absence thereof (including, but not limited to, the absence of quarterly or annual address reports required on or before December 31, 1981) existed in the records of one or more government agencies which, taken as a whole, warrants a finding that the applicant was in an unlawful status prior to January 1, 1982, in a manner known to the government.
- (2) Persons who violated the terms of their nonimmigrant visas before January 1, 1982, for whom INS/DHS records for the relevant period (including required school and employer reports of status violations) are not contained in the alien’s A-file, and who are unable to meet the requirements of 8 C.F.R. §§ 245a.1(d) and 245a.2(d) without such records.
- (3) Persons whose facially valid ‘lawful status’ on or after January 1, 1982 was obtained by fraud or mistake, whether such ‘lawful status’ was the result of

- (a) reinstatement to nonimmigrant status;
- (b) change of nonimmigrant status pursuant to INA § 248;
- (c) adjustment of status pursuant to INA § 245; or
- (d) grant of some other immigration benefit deemed to interrupt the continuous unlawful residence or continuous physical presence requirements of INA § 245A.

The AAO finds that the applicant is a member of the NWIRP class as enumerated above and will adjudicate the application in accordance with the standards set forth in the settlement agreement.

NWIRP provides that I-687 applications pending as of the date of the agreement shall be adjudicated in accordance with the adjudication standards described in paragraph 8B of the settlement agreement. Under those standards, the applicant must make a *prima facie* showing that prior to January 1, 1982, the applicant violated the terms of his or her nonimmigrant status in a manner known to the government because documentation or the absence thereof (including, but not limited to, the absence of quarterly or annual address reports required on or before December 31, 1981) existed in the records of one or more government agencies which, taken as a whole, warrants a finding that the applicant was in an unlawful status prior to January 1, 1982, in a manner known to the government.

It is presumed that the school or employer complied with the law and reported violations of status to the INS; the absence of such report in government records is not alone sufficient to rebut this presumption. Once the applicant makes such a showing, USCIS then has the burden of coming forward with proof to rebut the evidence that the applicant violated his or her status. If USCIS fails to carry this burden, the settlement agreement stipulates at paragraph 8B that it will be found that the alien's unlawful status was known to the government as of January 1, 1982. With respect to individuals who obtained their status by fraud or mistake, the applicant bears the burden of establishing that he or she obtained lawful status by fraud or mistake. The settlement agreement further stipulates that the general adjudicatory standards set forth in 8 C.F.R. § 245a.18(d) or 8 C.F.R. § 245a.2(k)(4), whichever is more favorable to the applicant, shall be followed to adjudicate the merits of the application once class membership is favorably determined.

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 NWIRP Settlement Agreement, 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. NWIRP Settlement Agreement paragraph 8 at pp. 14-15.

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.

In support of her claim of continuous unlawful residence in the United States, the applicant asserts that she was employed while in B-2 status. A review of the record reveals that the applicant testified at her April 13, 2007 interview with United States Citizenship and Immigration Services (USCIS) that she was admitted to the United States in B-2 visitor status on June 30, 1981 and that this status expired on December 27, 1981, six months later. She does not submit any evidence of this entry apart from her testimony. She has not established that she entered the United States on June 30, 1981. She also asserts that she violated her status by working without authorization. The applicant submits the following evidence of her employment:

- A letter from [REDACTED] Supervisor of Ladd Enterprises, who indicates that the applicant worked for Minit Market in Westminster, California from September 1981 until March 1986. The affiant does not indicate where the applicant resided during her employment. This letter also 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. The statement by [REDACTED] does not include much of the required information and can be afforded minimal weight as evidence of the applicant's employment in the United States for the period stated.
- The applicant also testifies that she was employed as a nanny and housekeeper by [REDACTED] [REDACTED] from March 1986 until February 1990. However, [REDACTED] submitted an affidavit in support of the application and he failed to mention that he employed the applicant during this period.

The AAO finds that the evidence submitted by the applicant is insufficient to establish that she worked without authorization during the relevant period. Neither affidavit nor letter is sufficiently detailed to be considered probative and credible. Accordingly, the applicant has not demonstrated that she violated her status by accepting unauthorized employment in manner known to the government, prior to January 1, 1982.

It is further noted that the applicant asserts that her lawful status expired on December 27, 1981 following a six month authorized stay in B-2 status. She does not assert, however, that this violation was known to the government prior to January 1, 1982, which would have been 5 days following her status expiration. Thus, she has not met her burden of proving that her unlawful status was known to the government prior to January 1, 1982 and she is not eligible to adjust to temporary status on this basis.

Furthermore, the AAO has conducted a *de novo* review of the application and finds that the applicant has failed to establish continuous unlawful presence for the duration of the requisite period. She submits the following evidence in support of her continuous residence:

- An affidavit from [REDACTED] who indicates that the applicant lived in Long Beach, California from June 1980 until October 1985. This is inconsistent with the applicant's testimony that she first entered the United States in June 1981.
- An affidavit from the applicant's sister, [REDACTED] who indicates that the applicant entered the United States in 1981 and visited her at her Manhattan home. She provides

no additional details which are probative of the issues in this application. She does not indicate how she dates her sister's arrival, how frequently she saw the applicant, or whether she ever visited the applicant at her residence.

- An affidavit from [REDACTED], who indicates that the applicant resided in Glendale, California from March 1986 until February 1990. The affiant does not mention employing the applicant, or that the applicant resided with him, as she asserts in both her Form I-687 and her testimony.
- An affidavit from [REDACTED], who indicates that the applicant resided in at [REDACTED] in Los Angeles from December 1985 until February 1990. This is inconsistent with both the applicant's testimony, and with the previous affiants. 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. Accordingly, this affidavit will be given no evidentiary weight.

The AAO further notes that on July 25, 1988, the applicant was arrested for Theft of Property in violation of California Penal Code section 484(A). The final court disposition for this arrest has not been submitted. As such, the applicant has not established her admissibility pursuant to 8 C.F.R. § 245a.2(d)(5).

Finally, the applicant indicated at her interview with USCIS that she was married in Pakistan during the 1980's. She does not indicate any departures from the United States during the relevant period except in 1985 for the birth of her daughter. This inconsistency casts further doubt on the reliability of her testimony.

Applying the adjudicatory standards set forth in the settlement agreement, the AAO finds that the applicant did not violate the terms of her nonimmigrant status in a manner known to the government prior to January 1, 1982. She has not submitted sufficient evidence that she worked without authorization prior to January 1, 1982 and that this employment was known to the government. She also failed to establish, by a preponderance of the evidence, that her lawful status expired prior to January 1, 1982 and that her unlawful status was known to the government. Finally, even if her unlawful status was known to the government prior to January 1, 1982, she has failed to establish that she continuously resided in the United States for the duration of 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.