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FILE:

MSC 05 252 10109

Office: LOS ANGELES

Date:

**JUN 30 2009**

IN RE: Applicant:

APPLICATION: Application for Temporary Resident Status under 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) on 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) on February 17, 2004 (CSS/Newman Settlement Agreements), was denied by the director in Los Angeles, California. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application on the ground that the applicant failed to establish that she was continuously resident in the United States in an unlawful status from before January 1, 1982 through the date of attempted filing during the original one-year application period for legalization that ended on May 4, 1988.

On appeal counsel asserts that the applicant has submitted sufficient credible evidence to establish her continuous residence in the United States during the requisite period for adjustment to temporary resident status.

An applicant for temporary resident status under section 245A of the Immigration and Nationality Act (the Act) must establish his or her entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status from before January 1, 1982 through the date the application is filed. *See* section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2). The applicant must also establish his or her continuous physical presence in the United States since November 6, 1986. *See* 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. *See* 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 the regulation at 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 from May 5, 1987 to May 4, 1988. *See* CSS Settlement Agreement, paragraph 11 at page 6; Newman Settlement Agreement, paragraph 11 at page 10.

An applicant for temporary resident status has the burden to establish 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. *See* 8 C.F.R. § 245a.2(d)(5).

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.* 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.

The regulations provide an illustrative list of documents that an applicant may submit – which includes affidavits and “any other relevant document” – as evidence of continuous residence in the United States during the requisite period under section 245A of the Act. *See* 8 C.F.R. § 245a.2(d0)(3)(vi)(L).

The applicant, a native of Mexico who claims to have lived in the United States since September 1980, filed her application for temporary resident status under section 245A of the Act (Form I-687), together with a Form I-687 Supplement, CSS/Newman (LULAC) Class Membership Worksheet, on June 9, 2005.

The applicant submitted the following evidence of her residence in the United States during the 1980s:

An affidavit by [REDACTED], a resident of Los Angeles, dated May 5, 2005, stating that the applicant, her sister-in-law, entered the United States in September 1980, lived with another sister-in-law, [REDACTED] until January 1988, and then moved in with the affiant and helped take care of her children.

An affidavit by [REDACTED], a resident of Los Angeles, dated May 5, 2005, stating that the applicant, his aunt, moved in with his family in Los Angeles in January 1988, when he was 12 years old, and that she helped his mother take care of him and his siblings.

An affidavit by [REDACTED], a resident of Los Angeles, dated May 7, 2005, stating that the applicant, her half-sister, entered the United States in September 1980, lived in her house until January 1988, when she moved in with their sister-in-law, [REDACTED] and that the applicant attended Berendo Middle School from September 1980 to June 1984.

Two photocopies of photographs of the applicant and other family members, allegedly taken in 1980 and on June 10, 1981.

- A photocopied Achievement Award of the Los Angeles Community Adult School, dated January 28, 1982, identifying the applicant as having taken a course on English as a Second Language.

On April 24, 2007 the director issued a Notice of Intent to Deny (NOID), indicating that the evidence of record did not establish the applicant's continuous unlawful residence in the United States during the years 1981 to 1988. Among other things, the director noted an evidentiary inconsistency between the affidavit of [REDACTED] and the Achievement Award described above as to where the applicant attended school in the early 1980s. The applicant was granted 30 days to resolve evidentiary discrepancies in the record and submit additional evidence.

In response to the NOID counsel submitted the following additional documentation, all in photocopied form:

Three envelopes addressed to the applicant on [REDACTED] (at two different numbers) in Los Angeles with Mexican postmarks dated April 15, 1981, May 19, 1981, and June 13, 1982.

- Five photographs of the applicant and her family – two with printed dates of July 1982 and the others allegedly taken in 1983 and 1984.

A registered mail receipt in the applicant's name, with a Los Angeles postmark dated May 21, 1984.

In a Notice of Decision dated June 4, 2007, the director denied the application. The director indicated that the applicant had not resolved the evidentiary discrepancies cited in the NOID, and that the additional documentation submitted in response to the NOID was insufficient to overcome the grounds for denial.

On appeal counsel asserts that the evidence of record is not contradictory, offers an explanation for the inconsistent school names appearing on the Achievement Award and in the affidavit of [REDACTED] and submits the following additional documentation:

- Another affidavit by [REDACTED], dated July 19, 2007, stating that it is her habit to write the dates of photographs she has taken on the back of the picture.

Three photocopied documents from the Los Angeles Community Adult School identifying the applicant as the recipient of (1) an Achievement Award for instruction in English as a Second Language on January 28, 1982; (2) an Achievement Award for ESL-1 instruction on June 14, 1982; and (3) a Certificate

of Merit for the completion of ESL-1 on June 14, 1982. According to counsel, all three documents had been issued just a few days before, as evidenced by imprinted seals of the school.

Counsel stated that a current original brochure of the Los Angeles School District Division of Adult & Career Education was also being submitted, to further clarify that Berendo School is one of its teaching locations, but no such brochure was in fact submitted.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that she resided continuously in the United States in an unlawful status from before January 1, 1982 through the date she attempted to file a Form I-687 during the original one-year application period that ended on May 4, 1988. The AAO determines that she has not.

The documentation from the Los Angeles Community Adult School bears no convincing evidence of having actually been issued in 1982. Counsel refers to markings on the photocopied Achievement Awards and Certificate of Merit submitted on appeal as "seals imprinted a few days ago," but has not submitted any original documents to show that seals were indeed "imprinted" thereon. While faint seals of the school do appear on the photocopied documents, without any accompanying certification from the school their authenticity is in doubt. Since the school still exists, as counsel indicates, there appears to be no reason why original documentation could not have been furnished directly from the school confirming that the applicant attended classes in 1982. For the reasons discussed above, the documentation of the Los Angeles Community Adult School lacks probative value. It is not persuasive evidence that the applicant was residing in Los Angeles in 1982.

Regarding the three envelopes addressed to the applicant in Los Angeles from individuals in Mexico, the originals are not in the record. Thus, it is difficult for the AAO to verify their authenticity. Two of the envelopes – with postmark dates of April 15, 1981 and June 13, 1982 – appear too smooth and unrumpled in their photocopied versions to actually be from the early 1980s, and they do not have the familiar striped edging of air mail letters. The other envelope – with a postmark date of May 19, 1981 – does have the familiar striped edging of an air mail letter, but the addresses of the sender and recipient appear to have been altered or newly added, and the applicant's address in Los Angeles is misidentified as [REDACTED], whereas the applicant claims to have lived at [REDACTED] (the address appearing on the other two envelopes) in the early 1980s. For the reasons discussed above, the envelopes lack probative value. They are not persuasive evidence that the applicant resided in Los Angeles in 1981-82.

As for the seven photographs in the record, which the applicant asserts were taken between 1982 and 1984, the only evidence of their time frame is the statement by [REDACTED] that she typically writes the date on the back of any photograph she takes. Whether she did with regard to the photographs at issue here cannot be determined because no original photos were submitted. Moreover, of the seven photocopies in the record only two include a photocopied back side with handwritten dates of 1980 and June 10, 1981, respectively. Even if the dates are correct, there is no way to verify where the photos were taken. The same applies to the other five photos. Even if they were taken in the United States, which is not clear from any indicators in the photos themselves, that fact alone would not demonstrate that the applicant was living in the United States at that time, as opposed to visiting. For the reasons discussed above, the seven photographs in the record, all submitted as photocopies, lack probative value. They are not persuasive evidence that the applicant was residing in the United States during the years 1982 to 1984.

With regard to the registered mail receipt in the applicant's name, with a Los Angeles postmark dated May 21, 1984, the space provided on the receipt for the customer's address was left blank. This omission casts doubt on the authenticity of the document. Even if the receipt is authentic, its failure to identify any address for the applicant greatly reduces its probative value as evidence that the applicant was living in the United States at the time. Thus, the registered mail receipt is not persuasive evidence that the applicant resided in the United States in 1984.

Finally, the affidavits in 2005 from family members who claim that the applicant lived with them in Los Angeles during the 1980s provide few details about the applicant's life in the United States during those years. None of the affiants provides any information about how the applicant came to the United States, and how they remember that it was in September 1980 that she arrived. Nor are the affidavits accompanied by any documentary evidence of the applicant's personal relationship with the affiants during the 1980s – aside from the photographs previously discussed, whose dates and locations cannot be confirmed. In view of these substantive shortcomings, the AAO finds that the affidavits have little probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States during the years 1981-1988.

Based on the foregoing analysis of the evidence, the AAO determines that the applicant has failed to establish that she resided continuously in the United States in an unlawful status from before January 1, 1982 through the date she attempted to file a Form I-687 during the original one-year application period that ended on May 4, 1988. Accordingly, the applicant is ineligible for temporary resident status under section 245A(a)(2) of the Act.

The appeal will be dismissed, and the application denied.

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