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U.S. Citizenship
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FILE:

MSC 06 029 10096

Office: LOS ANGELES

Date:

MAR 13 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:

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 denied the application, finding that the applicant had not provided credible evidence to establish that she had entered the United States prior to January 1, 1982, and thereafter continuously resided in the United States in an unlawful status for the duration of the requisite period.

On appeal, the applicant stated during her I-687 interview that she had never left the United States since her initial entry in 1975. The applicant further explains that her mother withdrew her and her siblings from school to assist with household chores and pay bills.

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 245(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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

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 submitted sufficient credible evidence to meet her burden of establishing that she (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 1, 1982 and lived in an unlawful status during the requisite period consists of affidavits written by relatives, her immunization records, three photographs, permanent record from Long Beach Unified School District Elementary School and other evidence. The AAO will consider all of the evidence relevant to the requisite period to determine the applicant’s eligibility.

The applicant stated that she entered the United States with her parents in June 1975. In her declaration dated May 11, 2005, the applicant states that she entered the United States with her mother, father and five siblings [REDACTED] and [REDACTED] in 1975, and at the time, she was one month old.

Her sister, [REDACTED] gives similar information in her declaration and adds that they crossed the border at San Ysidro, California. However, [REDACTED] states that she entered with four siblings [REDACTED] and [REDACTED]. Both declarations indicate that their mother, [REDACTED], passed away in 2000.

[REDACTED] declaration does not include sufficient detailed information about the applicant’s continuous residency in the United States since June 1975. The affiant fails to specify social gatherings and other special occasions or social events where they saw and communicated with each

other during the requisite period. The affiant also fails to indicate any other details that would lend credence to her claimed knowledge of the applicant's residence in the United States during the requisite period. The declaration does not provide concrete information, specific to the applicant and therefore, can only be given nominal weight.

Her step-sister, [REDACTED], does not confirm the applicant's illegal entry in her declaration. She also contradicts the date of their mother's death by stating she passed away on August 5, 2001 in Jalisco, Mexico. In her declaration, she states that in 1980, the applicant lived at [REDACTED], Long Beach, California; in the years 1984 and 1985, the applicant lived at [REDACTED] Long Beach, California, and in 1985, she also lived at [REDACTED] Long Beach, California; in 1986, the applicant moved to Gardena, California and finally in 1988, she moved to [REDACTED] Wilmington, California to live with her sister, [REDACTED]

There are several contradictions when comparing the addresses listed in Alicia's declaration with the addresses listed on the applicant's Form I-687 application. For instance, on the Form I-687 application, from 1978-1983, the applicant lived at [REDACTED], Long Beach, California; from 1984 - 1986, the applicant states that she lived in Gardena, California and only lived at [REDACTED] Long Beach, California, in 1986. From 1987-1989, the applicant states that she lived at Atlantic [REDACTED] Long Beach, California. The applicant states that she lived at [REDACTED], Wilmington, California from 1975-1978.

The inconsistencies regarding the dates and addresses of where the applicant resided within the United States are material to the applicant's claim in that they have a direct bearing on the applicant's residence in the United States during the requisite period. No evidence of record resolves these inconsistencies. 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 petitioner submits competent objective evidence pointing to where the truth lies. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The applicant also submitted an immunization record but it does not state the name of the person being immunized. Therefore, the AAO is unable to determine whether the report belongs to the applicant. The copies of the three photographs that were submitted with the applicant's Form I-687 application are identified by the event and dated by the declarant, [REDACTED]. The place and persons in the photographs have not been identified. Although the photos show that the applicant may have been in the United States, they do not establish the applicant's continuous unlawful residence in the United States during the requisite period.

An applicant shall be regarded as having resided continuously in the United States if, at the time of filing the application for temporary resident status, no single absence from the United States has exceeded 45 days, and the aggregate of all absences has not exceeded 180 days between January 1,

1982, through the date the application is filed, unless the alien can establish for due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the alien was maintaining residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.1(c)(1)(i).

The school records identifying the applicant were taken from the Long Beach Unified School District Elementary School Permanent Record. The record shows that on September 29, 1980, the applicant was enrolled at Burroughs School in kindergarten for 16 days; on September 17, 1980, the applicant enrolled in the same school and attended kindergarten for 143 days; on September 5, 1981, the applicant was enrolled in first grade for 170 days; and on September 14, 1982, the applicant enrolled in second grade for 97 days. The record shows that the applicant transferred to Mexico on March 11, 1983 and did not resume schooling until January 15, 1985, when she enrolled at Carver School in fourth grade for 97 days. The report lists her place of residence as [REDACTED] Tijuana, California, 90806 and this residence is not listed on the applicant's Form I-687 application. Further, the applicant's absence from school for over one year suggests that the applicant has not resided continuously in the United States for the requisite period.

Counsel states on appeal, that the applicant never left the United States. Counsel explains that the applicant's mother used the excuse that she was transferring the applicant to a school in Mexico in order to withdraw her and her siblings from school to assist with household chores and pay bills. However, counsel has not provided any evidence to show the applicant remained in the United States from March 11, 1983 through January 15, 1985 and did not break her continuous residence in the United States. No explanation and evidence has been provided to show that the applicant's absence from the United States were due to emergent reasons. Absent such evidence, the applicant disrupted her period of continuous residence in the United States during the statutory period of January 1, 1982 to May 4, 1988.

Moreover, the record reflects that [REDACTED] was arrested and charged with willful cruelty to child and inflicting injury upon child on October 22, 1993. The applicant was also arrested and charged with counts of battery on September 11, 2000. The applicant did not submit court dispositions indicating the resolutions of these arrests. Therefore, the applicant has not proved that she is admissible to the United States and for this reason as well, is not eligible for temporary residence in the United States. For this additional reason, the application may not be approved.

The AAO notes that the applicant's medical records during her 1990 pregnancy when she was 15 years old indicate that the applicant does not speak any English. The AAO does not find probable the applicant's claim that she lived in the United States during the first 15 years of her life, and did not speak any English.

In the instant case, the applicant has failed to submit sufficient evidence to overcome the director's denial. The insufficiency of the evidence calls into question the credibility of the applicant's claim of continuous unlawful residence in the United States throughout the requisite period. The evidence

submitted is insufficient to establish the applicant's 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 requisite period.

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.