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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
MSC-06-083-11375

Office: LOS ANGELES

Date: **MAR 27 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: 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, and is now before the Administrative Appeals Office 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 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 the applicant gave sworn testimony under oath during her immigration interview held on April 5, 2006, that she first entered the United States in 1986. The director also noted that the applicant was asked the same question three times, and answered the same each time with respect to her first entry into the United States. The director further noted that the applicant signed the sworn statement in her own handwriting confirming the statement made before an Immigration Officer. The director noted that the applicant also admitted on December 2, 1998 to an Immigration and Naturalization Service Special Agent that she first entered the United States on or about June 25, 1985. The director denied the application, finding that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, the applicant asserts that she first entered the United States in late 1981, and thereafter, traveled back and forth from Mexico to the United States until 1986. She asserts that she did not realize the necessity of being specific with the Immigration Officers and answered their questions thinking that they were only interested in information pertaining to the years 1985 and 1986. She further asserts that she told the Immigration Officer that she entered the United States in 1986 because that was her last entry into the country, but her first time entering the United States with her Border Crosser Card. The applicant submits evidence on appeal.

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 since before January 1, 1982, and throughout the requisite period. Here, the applicant has failed to meet this burden.

The applicant submitted copies of patient receipts from the Riverside General Hospital University Medical Center dated January 18, 1988, March 13, 1988, and May 6, 1988. She also submitted a photocopy of her California DMV Identification Card dated June 17, 1988, and her Social Security Administration Earned Income Statement which lists her income in the United

States from 1989 to 1999. The applicant submitted a photocopy of her Border Crosser Card with an issuance date of June 23, 1986. Although this evidence demonstrates the applicant's presence in the United States in 1986 and since 1988, it is insufficient to establish her continuous residence throughout the requisite period. The other evidence submitted by the applicant is dated subsequent to the requisite periods, and therefore, is irrelevant to her claimed eligibility for temporary resident status.

The director determined that the applicant admitted to first entering the United States subsequent to January 1, 1982 and was therefore not eligible for the immigration benefit sought.

On appeal, the applicant asserts that she has been present in the United States since before January 1, 1982, and that since her reentry into the United States in June 1986, she has continuously resided in the country.

Contrary to the applicant's assertions, the record of proceeding contains Form I-765, Applications for Employment Authorization, dated March 1, 2000 and April 5, 2006 where the applicant stated that she entered the United States on June 25, 1985 and in 1986 respectively. The record also contains a Form I-213, Record of Deportation/Inadmissible Alien, dated December 2, 1998 where the applicant claims that her last and only entry into the United States was on or about June 25, 1985. The applicant submitted a Form EOIR-40, Application for Suspension of Deportation, dated March 1998 in which she stated that she had been in the United States since June 1985. It is also noted that the record contains a Form I-130, Petition for Alien Relative, dated July 26, 2001 in which it is stated at part #14 that the applicant's date of arrival in the United States was June 1985. These unresolved inconsistencies cast doubt on the applicant's proof. 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. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

In the instant case, the applicant has failed to provide sufficient credible and probative evidence to establish her continuous unlawful residence in the United States since prior to January 1, 1982, and during the requisite period. She has failed to overcome the director's basis for denial.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period and the inconsistencies noted above seriously detract 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 multiple inconsistencies and contradictions found in the record, it is concluded that the applicant 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.