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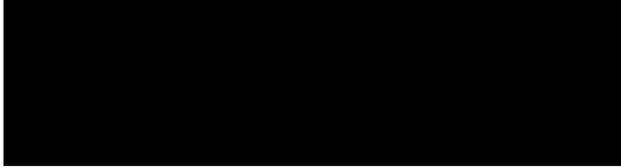
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE:



Office: LOS ANGELES

Date: MAY 05 2009

MSC 06 049 11157

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.

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 states that she left the United States in the later month of 1986, not January 1986, and reentered the United States in December 1986. The applicant states that she is eligible under the CSS settlement agreement. An additional affidavit has been submitted with the 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 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 of relationship written by friends and one family member and other evidence. The AAO will consider all of the evidence relevant to the requisite period to determine the applicant’s eligibility.

The applicant’s sworn affidavit provided in connection with her Form I-687 application indicates that she first entered the United States by crossing the Canadian border into the United States in 1977. The applicant’s legalization questionnaire indicates that the applicant came to the United States with her father and when her father went to apply for legalization, he was turned away because he had left the country. In her sworn affidavit, the applicant states that the first time she left the United States was the later part of 1986 and returned after Christmas of December 1986. The applicant does not give the month and day she left the United States in 1986.

The applicant obtained a multiple entry B1/B2, visitor for business and/or pleasure nonimmigrant visa to the United States from the American Consulate’s office in Manila, Philippines, on March 26, 2001. The earliest admission stamp in the applicant’s passport shows that she was initially admitted into the United States as a B-2, visitor for pleasure, on March 12, 2002 at Los Angeles. The applicant does not submit a copy of any previous passport, Form I-94 Departure Record or other documentary evidence showing that she entered the United States prior to January 1, 1982.

The applicant submitted three affidavits to establish her initial entry and residence in the United States during the requisite period. The affidavit from [REDACTED] states that he personally knows that the applicant is the daughter of his friends, [REDACTED] and [REDACTED] and that she resided in the United States at Los Angeles, California, from February 1977 to December 1982 and Arleta,

California, from December 1986 to February 1989. The affiant also attests to the applicant's good moral character. The affidavit provides no other information about the applicant.

The affidavit from the applicant's uncle, [REDACTED], states that to his personal knowledge, the applicant resided in Clovist, California, from March 1983 to November 1986 and in Arleta, California, from December 1986 to December 1989. However, on her Form I-687 application, the applicant does not claim to have resided in Clovist, California, from March 1983 to November 1986. [REDACTED] states in his affidavit that he is a family friend and personally knows that the applicant resided in Los Angeles, California, from February 1977 to December 1982 and Arleta, California, from December 1986 to December 1989.

The affiants fail to explain how they know of the applicant's continuous presence in the United States throughout the requisite period. [REDACTED] and [REDACTED] do not list an address for the applicant from 1983-1986. Further, the applicant never claimed to have resided in Clovist, California, from 1983-1986 as indicated by [REDACTED] in his affidavit.

The inconsistencies 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 affidavits do not include sufficient detailed information about the claimed relationship of more than 30 years and the applicant's continuous residency in the United States since before January 1, 1982 and throughout the requisite period. For instance, none of the witnesses supply any details about the applicant's life, such as, knowledge about her family members, education, medical care, hobbies, and the date and manner she entered the United States. The affiants fail to indicate any other details that would lend credence to their claimed acquaintance with the applicant and the applicant's residence in the United States during the requisite period.

The affidavits do not provide concrete information, specific to the applicant and generated by the asserted associations with her, which would reflect and corroborate the extent of those associations and demonstrate that they were a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the affidavits. To be considered probative and credible, witness affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged.

Upon review, the AAO finds that the affidavits do not contain sufficient detail to establish the reliability of their assertions. The affidavits are 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, the affidavits have little probative value.

In the instant case, the applicant has failed to submit sufficient evidence to overcome the director's denial. The insufficiency of the evidence and the inconsistency regarding the applicant's residence in Clovist, California from 1983-1986, call 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.

Beyond the director's decision, this application cannot be approved for another reason. The record establishes that the applicant disrupted her period of continuous residence in the United States during the statutory period of January 1, 1982 to May 4, 1988.

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).

In her sworn affidavit, the applicant states that the first time she left the United States was the later part of 1986 because her grandmother was ill. She returned to the United States after Christmas of December 1986. The applicant does not give the month and day she left the United States in 1986. All of the applicant's subsequent absences from the United States are not during the requisite period. The applicant claims on her Form I-687 application that she resided in Los Angeles, California, from February 1977 to December 1982, and Arleta, California, from December 1986 until December 1989. The applicant does not claim to have resided in the United States from December 1982 to December 1986. [REDACTED] is the only witness who stated that the applicant lived in the United States from 1983 – 1986, and this information is not supported by the applicant's testimony or any other evidence of record. The applicant's apparent absence from the United States from December 1982 to December 1986 establishes a break in her period of continuous residence in the United States during the requisite period. No explanation and evidence has been provided to show that the applicant resided continuously in the United States throughout the requisite period. For this additional reason, the application may not be approved.

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