

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

41



FILE:



Office: NEWARK

Date:

MAY 11 2009

MSC 06 053 11637

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.

A handwritten signature in black ink, appearing to read "John F. Grissom".

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, Newark. 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, and that the evidence submitted by her did not establish her eligibility for the immigration benefit sought. The director denied the application, finding that the applicant had not met her burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements. Specifically, the director found that the witness statements submitted by the applicant in support of her application lacked sufficient detail relevant to the requisite period to establish the applicant's eligibility for the immigration benefit sought.

On appeal, counsel submits a brief stating that the evidence submitted by the applicant establishes the applicant's eligibility for the immigration benefit sought. Counsel asks that the director's decision be overturned and the application approved.

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.

The issue in this proceeding is whether the applicant (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 record contains the following evidence which is material to the applicant’s claim:

- The applicant submitted 13 witness statements in support of her application. Some of the statements were notarized and/or sworn to, and some were not. The statements are general in nature with all witnesses stating that they know the applicant, and that they have personal knowledge of the applicant’s residence in the United States during all, or a portion of, the requisite period.

Some of the witness statements, however, provide contradictory information:

1. [REDACTED] provided two witness statements. One is a “form” affidavit, and although it is notarized, it is undated. In that affidavit, [REDACTED] states that he has known the applicant since March of 1985. In a witness statement provided by [REDACTED] and dated December 15, 2006, which is neither sworn to nor notarized, the witness states that he has known the applicant’s husband since 1976, but indicates that he first came to know the

applicant upon his arrival in the United States in 1984.¹ The record contains no explanation for the referenced discrepancy.

2. [REDACTED] submitted an undated witness statement that bears the signature and stamp of a notary public. In that statement, the witness states that she has been acquainted with [REDACTED] (now [REDACTED]) and that she has personal knowledge that the applicant resided in the United States as follows: [REDACTED] [REDACTED] from July of 1984 to "Present;" and at [REDACTED] [REDACTED] from October of 1981 to "Present." The applicant does not list either of these addresses as a former place of residence on the Form I-687. The applicant notes on the Form I-687 that from April of 1983 until July of 1987, she resided at [REDACTED] in Rahway, NJ. The applicant does not list any United States address on the Form I-687 prior to April of 1983. These inconsistencies are not explained in the record.
3. [REDACTED] submitted an undated witness statement that bears the signature and stamp of a notary public. In that statement, the witness states that he has been acquainted with [REDACTED] (now [REDACTED]) and that he has personal knowledge that the applicant resided in the United States as follows: [REDACTED] [REDACTED] from August of 1983 to "Present;" and at [REDACTED], [REDACTED] from October of 1981 to "Present." The applicant does not list either of these addresses as a former place of residence on the Form I-687. The applicant notes on the Form I-687 that from April of 1983 until July of 1987, she resided at [REDACTED] in Rahway, NJ. The applicant does not list any United States address on the Form I-687 prior to April of 1983. These inconsistencies are not explained in the record.
4. [REDACTED] i submitted a notarized statement in support of the applicant wherein she stated that the applicant lived in her residence at [REDACTED], Rahway, NJ from March of 1985 until August of 1987. The applicant stated on the Form I-687 that she resided at that address from April of 1983 until July of 1987. This inconsistency is not explained in the record.
5. Walter Nasi submitted an undated witness statement that bears the signature and stamp of a notary public. In that statement, [REDACTED] states that he has been acquainted with [REDACTED] (now [REDACTED]) and that he has personal knowledge that the applicant resided in the United States at [REDACTED], [REDACTED] from October of 1981 to "Present." The applicant does not list this address as a former place of residence on the Form I-687. The applicant notes on the Form I-687 that from April of 1983 until July of 1987, she resided at [REDACTED] in Rahway, NJ. The applicant does not

¹ The evidence suggests that the applicant and her husband met and married in the United States and had three children. There is no marriage certificate and there are no birth certificates of the three children indicating when and where these milestones occurred.

list any United States address on the Form I-687 prior to April of 1983. These inconsistencies are not explained in the record.

As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. The witness statements provided do not provide detailed evidence establishing how the witnesses knew the applicant, the details of their association or relationship, or detailed accounts of an ongoing association establishing a relationship under which the witnesses could be reasonably expected to have personal knowledge of the applicant's residence, activities and whereabouts during the requisite period covered by the applicant's Form I-687. To be considered probative, witness statements must do more than simply state that a witness knows an applicant and that the applicant has lived in the United States for a specific time period. The statements must contain sufficient detail, generated by the asserted contact with the applicant, to establish that a relationship does in fact exist, how the relationship was established and sustained, and that the witness does, by virtue of that relationship, have knowledge of the facts asserted. The witness statements submitted by the applicant, therefore, are not deemed probative and are of little evidentiary value.

It is further noted that the witness statements submitted are not deemed probative because of the discrepancies noted above between the witness statements and the information provided by the applicant. The noted discrepancies are material to the applicant's claim because they have a direct bearing on the applicant's whereabouts and activities during the requisite period. Further, they have not been explained in the record. 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 petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The evidence submitted in support of the applicant's claim lacks credibility, and it cannot be determined from the record where the truth actually lies.

The applicant submitted three employment letters in support of her application.

1. [REDACTED], President of 3-C-Outerwear, Inc. submitted an unsworn statement dated May 31, 1990 wherein he states that the applicant was employed by his company from March of 1983 until June of 1987 as a machine operator. The applicant lists no such employment on the Form I-687.
2. [REDACTED] submitted an unsworn statement dated April 25, 1990 on the letterhead of Sparkle Togs, Inc., wherein he states that the applicant was employed by his company from November of 1981 until February of 1983 as a machine operator. The applicant lists no such employment on the Form I-687.
3. [REDACTED] submitted an unsworn statement on the letterhead of L & S Sportswear, Corp. dated June 1, 1990 wherein she states that the applicant was

employed by her company from August of 1987 until January of 1990 as a machine operator. The applicant lists no such employment on the Form I-687.

The employment statements submitted by the applicant are of little evidentiary value as they are inconsistent with the employment history listed by the applicant on the Form I-687, and the inconsistencies are not explained in the record. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Further, the employment statements are not deemed probative because they do not comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(i) which states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable. The employment letters submitted by the applicant do not: provide the applicant's address at the time of employment; show periods of layoff (or state that there were none); declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

- The applicant submitted an unsworn attestation from the [REDACTED] wherein he states that the applicant has been a member of St. Mary's Church in Rahway N.J. for over 20 years, with the applicant having joined the church in 1981.

The regulation at 8 C.F.R. § 245a.2(d)(3)(v), as hereinafter set forth, provides requirements for attestations made on behalf of an applicant by churches, unions, or other organizations:

- (v) Attestations by churches, unions, or other organizations to the applicant's residence by letter which:
 - (A) Identifies applicant by name;
 - (B) Is signed by an official (whose title is shown);
 - (C) Shows inclusive dates of membership;
 - (D) States the address where applicant resided during membership period;
 - (E) Includes the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery;
 - (F) Establishes how the author knows the applicant; and
 - (G) Establishes the origin of the information being attested to.

The attestation provided is of little evidentiary value as it does not state the applicant's address during the membership period or establish the origin of the information attested to as required by regulation. It should further be noted that this church affiliation is not listed by the applicant on the Form I-687.

- The applicant submitted merchandise receipts for the years 1984, 1985 and 1987. The record contains no information detailing the significance of these receipts or establishing, in any manner, that they are related to the applicant or the present application for immigration benefits. They are, therefore, of little evidentiary value.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of her 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 applicant's reliance upon documents with minimal probative value, it is concluded that the evidence submitted fails to establish continuous residence in an unlawful status in the United States during the requisite period.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that she has 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.