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U.S. Citizenship
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FILE:

MSC-05-326-10379

Office: NEW YORK

Date:

MAY 11 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 District Director, New York. 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 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.

On appeal, counsel asserts that the applicant provided sufficient proof of her eligibility. Counsel contends that the applicant submitted several statements to support her claim and these statements can be verified. Counsel maintains that the photographs submitted were taken during the relevant period. Counsel states that the applicant was unable to provide documentation of her first entry into the United States in 1980 because those documents are no longer in her possession. Counsel notes that because of the applicant's undocumented status, it was not possible for her to have every possible required document in her name.

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. 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 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. 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's 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).

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. *See* 8 C.F.R. § 245a.2(d)(6). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

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 or petitioner 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 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 documentation that the applicant submits in support of her claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of copies of photographs and three witness attestations. The AAO has reviewed each document in its entirety to determine the applicant's eligibility; however, the AAO will not quote each witness statement in this decision.

The record contains an affidavit from [REDACTED] dated September 30, 2006. The affidavit provides that he entered the United States in 1983. It states that from 1983 to 1985 he visited employment agencies to find a suitable job. The affidavit indicates that [REDACTED] first met the applicant at an employment agency. Although [REDACTED] states that he has known the applicant during the requisite period, his affidavit does not provide enough details to lend credibility to his claimed relationship with the applicant. For instance, [REDACTED] does not indicate the date and location of where he first met the applicant. Nor does he explain with any detail the frequency of his contact with the applicant or his personal knowledge of the applicant's presence in the United States. It is further noted that [REDACTED] does not provide information regarding where the applicant lived or was employed during the requisite period. For these reasons, the affidavit is of little probative value.

The record contains a witness statement from [REDACTED] dated March 10, 2006. This statement provides that [REDACTED] first met the applicant in December 1981 at a party. The AAO finds that this attestation fails to provide concrete information to demonstrate that there is a sufficient basis for [REDACTED] knowledge about the applicant's residence in the United States during the requisite period. For instance, [REDACTED] does not indicate whether he first met the applicant in the United States or abroad. Nor does he explain the frequency of his contact with the applicant or his personal knowledge of the applicant's presence in the United States. Furthermore, [REDACTED] failed to provide information regarding where the applicant lived or was employed during the requisite period. Accordingly, the witness statement is of little probative value.

The record of proceedings also contains a declaration issued in Malaysia from the applicant's sister, [REDACTED]. The declaration provides that the applicant left for the United States on March 16, 1980. According to the applicant's written statement, she entered Los Angeles without inspection on March 16, 1980. The AAO finds that this declaration fails to provide any details to lend credibility to [REDACTED] assertions. The declaration fails to explain the applicant's mode of travel to the United States, and where the applicant stayed once she arrived in the United States. It also does not offer any details on the applicant's residence and presence in the United States during the requisite period, such as, where she resided and her place of employment. Given this lack of detail, the declaration is of little probative value.

The final item of evidence in the record consists of copies of five photographs. These photos are of little evidentiary value because the applicant has not indicated where they were taken, the identity of the individuals featured in the photos, and the date the photos were taken. Moreover, the photographs are not date stamped as evidence that they were taken and/or developed during the requisite period. On appeal, counsel asserts that the photographs were taken during the requisite period. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that she is eligible for the benefit sought.

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.