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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

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FILE:

MSC-06-098-25376

Office: LOS ANGELES

Date:

MAY 14 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:

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. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed or rejected, 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.

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 (together comprising the I-687 Application). The director denied the application, finding that the applicant had failed to meet her burden of proving by a preponderance of the evidence that she had resided in the United States continuously since before January 1, 1982. Further, the director determined that the applicant was ineligible for the benefit sought because of her recorded absence for more than 45 days between June 1984 and August 1984 on her Form I-687 application.

On appeal, the applicant contends that she has continuously resided in the United States since 1981. She further asserts that her absence in 1984 is not more than 45 days since she left the United States on June 24 or 29, 1984 and returned on August 3, 1984. On appeal, the applicant submits two additional affidavits and a statement of earnings from Social Security Administration to substantiate her claim of continuous residence in the United States since before January 1, 1982.

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)(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 shall be regarded as having resided continuously in the United States if at the time the application for temporary resident status is considered filed, as described above pursuant to the CSS/Newman Settlement Agreements, no single absence from the United States has exceeded 45 days, and the aggregate of all absences has not exceeded 180 days during the requisite period unless the applicant can establish that due to emergent reasons the return to the United States could not be

accomplished within the time period allowed, the applicant was maintaining a residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.2(h).

If the applicant's absence exceeded the 45-day period allowed for a single absence, it must be determined if the untimely return of the applicant to the United States was due to an "emergent reason." Although this term is not defined in the regulations, *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), holds that "emergent" means "coming unexpectedly into being."

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

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 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.

At issue in this proceeding is whether the applicant has furnished sufficient credible evidence to meet her burden of proving by a preponderance of the evidence that she has continuously resided in the United States since before January 1, 1982 and throughout the requisite period.

During her interview with a United States Citizenship and Immigration Service (USCIS) officer on September 29, 2006, the applicant stated that she had resided in the United States continuously since September 1981. As evidence, the applicant submitted various documents including a statement of earnings from Social Security Administration, a photocopy of her California driver's license issued in September 1984 and photocopies of her individual tax returns along with the W-2s from 1987 to 2003. The record also contains evidence of the applicant's entry into the United States with a B-1 business visa on August 3, 1984. A review of the record further reveals that the applicant's B-1 visa was extended to April 30, 1987. Based on the record of evidence and the documents submitted above, the AAO finds that the applicant has probably resided in the United States continuously since August 3, 1984.

To show that she has resided in the United States since before January 1, 1982, the applicant furnished eleven affidavits. The affidavits from [REDACTED] and [REDACTED] will not be considered since the affiants claim to have known the application after the requisite period.

[REDACTED] states in his affidavit that the applicant resided at his home in Los Angeles, California from December 1981 to June 1984, but he provides no concrete information about the applicant's residence or life in the United States during the period specified in his affidavit. Nor does he submit contemporaneous documents to prove that he resided in the United States during the requisite period. By itself, the affiant's brief statement that the applicant resided at his home from 1981 to 1984 is not persuasive as evidence of the applicant's continuous residence in the United States throughout the requisite period.

[REDACTED] and [REDACTED] generally indicate in their sworn statements that they know where the applicant has been residing in the United States since 1981. However, simply listing the address at which the applicant lived during the requisite period without providing any detail about the events and circumstances of the applicant's life in the United States during the requisite period does not establish her continuous residence in the United States since before January 1, 1982. None of the witness statements above 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 have 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. Thus, since the affidavits lack relevant detail, they have minimal probative value as evidence of the applicant's continuous residence in the United States since before January 1, 1982.

[REDACTED] states in his affidavit that he employed the applicant from 1981 as a property manager. His statement, however, lacks probative value since he fails to include specific

information about the applicant's employment as prescribed by the regulations at 8 C.F.R. § 245a.2(d)(3)(i). Specifically, the affiant fails to provide information about where the applicant resided at the time of employment, what her specific duties with the company were, whether or not the information was taken from official company records, and where such records are located and whether USCIS may have access to the records. Additionall the applicant's Form I-687 filed in 1990 does not indicate that she ever worked for [REDACTED]. Her current Form I-687 also does not list any employment as a property manager in 1981, nor does it indicate any employment with [REDACTED]. 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 applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the application. *Id.* at 591.

[REDACTED] and [REDACTED] state in their affidavits that they first met the applicant in 1981 and that the applicant resided in Las Vegas, Nevada during the requisite period. However, a review of the applicant's current Form I-687 does not indicate that the applicant ever resided in Las Vegas, Nevada during or after the requisite period. Their affidavits are not probative as evidence of the applicant's residence in the United States.

On appeal, the applicant claims that her absence in 1984 was not for more than 45 days. Under the regulations as indicated above, if an applicant for temporary resident status left the United States for more than 45 days during the requisite period, his or her residence would not be deemed continuous unless his or her inability to return was due to an emergent reason or reasons. No evidence has been submitted to show that the applicant departed the United States on June 24 or 29, 1984 as she states on appeal. A review of the applicant's Form I-687 filed in 1990 further reveals that the applicant listed three sets of dates for absences from the United States, all of which are inconsistent with her Form I-687 filed in 2006. The applicant has not established that she was absent from the United States for less than 45 days in 1984.

The applicant's Form I-687 filed in 1990 also shows that the applicant resided in Las Vegas, Nevada, during the requisite period. However, according to the currently filed Form I-687, the applicant always resided in California during the requisite period. Further, the record shows that the applicant worked in the Philippines for Atillo Manufacturing Company from February 1979 through April 1982. This employment with Atillo Manufacturing Company was not recorded in either the 1990 or the 2006 application. The inconsistencies in the record concerning the applicant's residence and work in the United States as well as her absences during the requisite period seriously damage her credibility and claim that she has resided in the United States continuously since before January 1, 1982.

The noted inconsistencies, the lack of detail in the affidavits, and the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period detract 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 inconsistencies in the record and the lack of credible supporting documentation, it is concluded that 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.