



U.S. Citizenship
and Immigration
Services

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

L1



FILE:

Office: HOUSTON

Date:

NOV 16 2009

MSC 05 201 13702

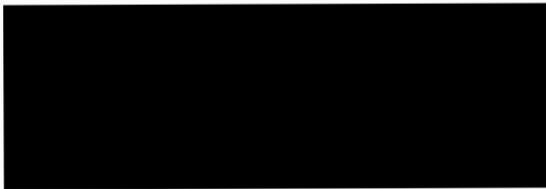
IN RE:

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.

Perry Rhew
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, Houston. An appeal was filed. The director rejected the appeal as untimely and upheld his previous decision. In a subsequent Service motion to reopen and reconsider, the director found that the grounds for the rejection had been overcome and ordered that the processing of the appeal be continued. 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 he 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 since 1980, she has been residing in an unlawful status in the United States. The applicant requests that the director reconsider his decision.

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, a letter from her previous employer, copies of seven envelopes and other evidence. The AAO will consider all of the evidence relevant to the requisite period to determine the applicant's eligibility; however, the AAO will not quote each witness statement in this decision.

The applicant's current Form I-687 application indicates that the applicant first entered the United States with a visa at Laredo, Texas, in January, 1980. The initial Form I-687 application indicates the applicant entered without a visa at Laredo, Texas, in January, 1980.

In the applicant's statement dated January 9, 1992 taken during the interview to establish class membership, the applicant claimed to have first entered the United States through Laredo, Texas, using her border crossing card in 1981. The applicant also stated that she used the name [REDACTED] when she worked in San Antonio, Texas, from 1980 to 1981.

The applicant claimed during her I-485 application interview on November 17, 2003 that she would enter the United States with her border crossing card and remain in the United States for one week at a time and then return to Mexico. She stated that she entered the United States in 1988 with her border crossing card and did not work in the United States prior to 1988. When she worked at a hotel in San Antonio, she claimed that she used the name [REDACTED]. The applicant also claimed that she gave birth to her son in the United States in 1986 and was in the United States for five months before returning to Mexico. The applicant stated that she resided in Mexico until 1988.

The applicant claimed during her I-687 interview on June 1, 2006 that she first entered the United States through Laredo, Texas, using her border crossing card in January, 1980. The applicant claimed that she stayed in Laredo, Texas, for one week before moving to Houston, Texas, where she lived until 1988. This testimony contradicts the testimony she gave at the Form I-485 interview.

On appeal, the applicant explains that she does not understand why there are so many discrepancies during her interview under the LIFE Act but claims that maybe her English was not too good at that time. The applicant states in her written brief submitted with her appeal that the truth is that she remained in Mexico for one week and then returned to the United States; that she was in the United States in 1986 and gave birth to her son; that she resided in the United States since 1980 and worked in the United States prior to 1988; and that she traveled to Mexico in January, 1988, and returned to the United States during the same month and year. However, this explanation does not address why the applicant affirmed the content and accuracy of her testimony at her Form I-485 interview on November 17, 2003 by signing the interviewing officer's notes. The record reflects that the interview was conducted in Spanish and that the applicant was represented by counsel.

In the Notice of Intent to Deny (NOID), the director states that the applicant failed to provide any explanation as to how her child was born in Rosenberg, Texas, when she claimed on her Form I-687 application that she lived and worked in Chicago, Illinois. In a sworn affidavit dated March 6, 2007, the applicant claimed that she left Chicago, Illinois, in 1986, went to Mexico for about a month, returned to the United States and stayed in Rosenberg, Texas. The birth certificate of the applicant's son, [REDACTED], is contained in the record of proceeding and shows that he was born on September 6, 1986 in Rosenberg, Texas, to [REDACTED] residing at [REDACTED]. However, the applicant claimed on her Form I-687 application that she resided at [REDACTED] from January, 1992, to December, 1992. Further, the applicant never claimed on her Form I-687 application to have traveled outside the United States in 1986.

The inconsistencies regarding the applicant's date of entry, absences from and residences in the United States are material to the applicant's claim in that they have a direct bearing on the applicant's continuous 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 applicant submitted declarations from [REDACTED] and [REDACTED] to establish her initial entry and residence in the United States during the requisite period. The declarations all contain statements that the affiants either have personally known or been acquainted with the applicant or know that the applicant resided in the United States since the 1980's. [REDACTED] stated that the applicant was employed by Nuevo Leon Restaurant from February, 1984, to January, 1987; [REDACTED] stated that the applicant was employed by La Quinta Inn in 1980, and Veg-Pak, Inc. from 1981 until February, 1984; neither of them state how they gained such knowledge. [REDACTED] stated that the applicant lived in his home from 1983 to 1985 at [REDACTED].¹ The declarants generally attest to being the applicant's friend, communicating and socializing with the applicant. The declarants also attest to the applicant's good moral character but provide no other information about the applicant.

As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. The absence of sufficiently detailed declarations to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of her claim. For instance, none of the declarants supplies any details about the applicant's life, such as, knowledge about her family members, education, hobbies, employment, shared activities with the applicant, and the manner she entered the United States.

The declarants 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 declarations. 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. Given the applicant's reliance upon documents with minimal probative value, it is concluded that the applicant has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the requisite period. Therefore, the declarations have little probative value.

The record also contains a letter from one of the applicant's previous employers, [REDACTED]. [REDACTED] states in his letter that the applicant was employed as a housekeeper at [REDACTED] from January, 1987, until the present date. The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must:

¹ The applicant claimed on her Form I-687 application to have resided at [REDACTED] from February, 1984, to January, 1987.

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. As the letter does not meet the requirements stipulated in the aforementioned regulation, it will be given nominal weight.

The record contains pay stubs dated January 18, and February 15, 1981, which do not bear the name and address of the employee or the employer and cannot be identified as belonging to the applicant. The record also contains pay stubs issued to [REDACTED] from [REDACTED] dated in 1981 and a W-2 issued to [REDACTED] from [REDACTED]. The regulation at 8 C.F.R. § 245a.2(d) states in pertinent part that:

(2) *Assumed names - (i) General.* In cases where an applicant claims to have met any of the eligibility criteria under an assumed name, the applicant has the burden of proving that the applicant was in fact the person who used that nameThe assumed name must appear in the documentation provided by the applicant to establish eligibility. To meet the requirements of this paragraph documentation must be submitted to prove the common identity, i.e., that the assumed name was in fact used by the applicant.

(ii) *Proof of common identity.* The most persuasive evidence is a document issued in the assumed name which identifies the applicant by photograph, fingerprint or detailed physical description. Other evidence which will be considered are affidavit(s) by a person or persons other than the applicant, made under oath, which identify the affiant by name and address, state the affiant's relationship to the applicant and the basis of the affiant's knowledge of the applicant's use of the assumed name. Affidavits accompanied by a photograph which has been identified by the affiant as the individual known to affiant under the assumed name in question will carry greater

In the instant case, the applicant has not submitted sufficient evidence to establish that [REDACTED] and the applicant, [REDACTED], are the same persons. The applicant has not submitted sufficient evidence to establish that she worked for [REDACTED] or [REDACTED] which are the names of the employers that appear on the 1981 pay stubs and the 1980 Wage and Tax Statement (Form W-2) respectively, in the alias name of [REDACTED]. The record contains no evidence such as a document issued in the assumed name that identifies the applicant by photo, fingerprint or detailed physical description as an employee of [REDACTED] or [REDACTED] Inns, Inc. under the assumed name of [REDACTED]. The social security number reflected on the applicant's Form I-687 and Form I-485 applications does not match the social security number reflected on the pay stubs, income tax return and Form W-2. There are no letters from the employers

verifying the applicant's employment in the assumed name. Therefore, this evidence will be given no weight.

The applicant also submitted copies of stamped envelopes, six of which were addressed to the applicant. However, the probative value of the envelopes is limited because the postmark dates are not legible. The record also contains copies of envelopes, pay stubs and a 1980 United States Individual Income Tax Return in the name of [REDACTED], a prenatal program fee assessment sheet and several receipts.

The birth certificate of the applicant's son, [REDACTED] born on September 6, 1986 in Rosenberg, Texas, the prenatal program assessment sheet dated and signed by the applicant on April 22, 1986, the prenatal care receipts and the telephone deposit receipt from Southwestern Bell telephone dated April 8, 1987 establish that the applicant was present in the United States for some part of the requisite period. Nevertheless, an applicant applying for adjustment of status under this part has the burden of proving by a preponderance of evidence that he or she is eligible for adjustment of status under section 245a of the Act. 8 C.F.R. § 245a.2(d)(5). 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 internal inconsistencies in the applicant's testimony 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.

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