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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:

OCT 02 2009

MSC 06 101 15671

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.

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, 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 resubmits a copy of the same affidavits from [REDACTED] and [REDACTED], postmarked envelopes and photographs that were submitted when filing her Form I-687 application. The record also contains declarations from [REDACTED] and [REDACTED], copies of additional photos and postmarked envelopes that were not addressed in the director's 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 letters, affidavits of relationship written by friends, photographs and other evidence. The AAO will consider all of the evidence relevant to the requisite period to determine the applicant’s eligibility.

In the applicant’s sworn statement, she states that she first entered the United States illegally through San Ysidro in January, 1980.

The applicant submitted statements from [REDACTED], and [REDACTED] to establish her initial entry and residence in the United States during the requisite period. In her declaration, [REDACTED] states that she has full knowledge of the applicant’s arrival in the United States since January, 1980, because when she arrived, the applicant called and told her she would be living in Los Angeles, California. The affiant states that the applicant worked as a jewelry representative but provides no other information about the applicant.

states in his letter that he met the applicant when he worked at the Ambassador Print Shop in 1981. states the he still keeps in touch with the applicant and attends social and family gatherings. In her letter, stated that she met the applicant through her husband in Los Angeles in 1987. also stated that from 1987 to 1988, she resided at , and that the applicant lived in the same apartment complex. However, the applicant claimed on her Form I-687 application, at part 30, that she resided at from August 1989 to August 1991. The affidavit from states that she has personally known and been acquainted in the United States with the applicant from 1984. states that they have maintained a friendship through the years. states that she met the applicant in 1982 in , Los Angeles, while the applicant was selling jewelry. states that she knows the applicant came to the United States before January 1, 1981 because she asked her how long she was living in the United States. claims that they saw each other every two months. The affiant attests to the applicant's good moral character but provides no other information about the applicant.

Upon review, the AAO finds that the statements lack the detail required to establish their credibility. The statements do not include sufficient detailed information about the claimed relationship and the applicant's unlawful entry prior to January 1, 1982 and continuous residency in the United States throughout the requisite period. The affiants fail to indicate any other details that would lend credence to the claimed acquaintance with the applicant and the applicant's residence in the United States during the requisite period.

The statements do not provide concrete information, specific to the applicant and generated by the asserted association with her, which would reflect and corroborate the extent of this association and demonstrate that the witnesses had a sufficient basis for reliable knowledge about the applicant 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.

The remaining evidence consists of copies of photographs and four notes written in the Spanish language. The regulation at 8 C.F.R. § 103.2(b)(3) states in pertinent part that any document containing foreign language submitted to the United States Citizenship and Immigration Services (USCIS) must be accompanied by a full English language translation. The record, as it is presently constituted, does not contain a full English language translation of the notes. The applicant submitted copies of several photographs but the photos are not dated and the location and generally all of the persons in the photos have not been identified by name. The applicant also submitted copies of stamped envelopes addressed to the applicant. However, the probative value of the envelopes is limited because either the postmark dates are not legible or the postmark dates have been rewritten over with an ink pen.

Although the pay check stub in the applicant's name from Olympic Fashions for the pay period September 28-October 4, 1986, birth certificate of the applicant's son, [REDACTED] born in California on November 13, 1986, and his immunization record showing vaccinations given on January 26, 1987, April 2, 1987, September 3, 1987, January 23, 1988 and March 26, 1988 establish that the applicant was present in the United States for some part of the requisite period, 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 calls into question the credibility of the applicant's claim to have entered the United States illegally in January 1980 and her 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.