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U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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FILE: MSC-06-098-12058

Office: SAN FRANCISCO

Date: OCT 08 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.

Perry J. 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, San Francisco, and 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 submit sufficient credible evidence to prove that she had continuously resided in the United States since before January 1, 1982.

On appeal, the applicant submits two additional affidavits as evidence of her residence in the United States during the requisite period.

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 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 entered the United States before January 1, 1982 and that she has resided in the United States throughout the requisite period.

The applicant stated during the interview that she first entered the United States in 1981, when she was four years old with her uncle. She further claimed that she had resided in the United States continuously since that date until June 1987, the date her uncle attempted to file the application for temporary resident status.

To prove that he has resided continuously in the United States throughout the requisite period, the applicant submitted one affidavit. [REDACTED] states in her affidavit that she has known the applicant since 1981 but provides no further information about the applicant's life in the United States during the requisite period. She does not describe with any detail what the applicant did with her time, her activities, friendships, interaction with the community, or other particulars of her residence in the United States during the requisite period. Nor does she state with specificity where the applicant lived or how the applicant supported herself financially as a minor while residing in the United States during that period. The lack of detail is significant, considering that the applicant was only four years of age in 1981. To be considered probative and credible, 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.

Simply stating that the applicant has lived in the United States 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 the reliability of the assertions and does not establish the applicant's continuous residence in the United States since before January 1, 1982 and throughout the requisite period. The affidavit will be given nominal weight.

On appeal, the applicant submits additional affidavits from [REDACTED] and [REDACTED]. Both affiants claim they have known the applicant since 1981. Both state they have personal knowledge of the applicant's residence in the United States with her uncle in 1981. Both provide the address where the applicant lived during the requisite period. Neither, however, offers a detailed account of the applicant's life in the United States during the requisite period. Neither provides a clear picture of how the affiant first met the applicant in the United States or how he dates the beginning of his acquaintance with the applicant in 1981. Simply listing the address at which the applicant lived during the requisite period without providing any detail about the nature of his or her association or friendship with the applicant does not establish that the affiant has knowledge of the facts alleged and does not establish the applicant's continuous residence in the United States since before January 1, 1982. Neither affidavit is probative as evidence of the applicant's residence in the United States during the requisite period.

The applicant was four years old in 1981. No school, medical, or immunization records have been submitted. The applicant additionally fails to provide any evidence from a responsible caregiver who cared for the applicant when she was a child. Taken individually and collectively, the AAO agrees with the director that the evidence submitted in this proceeding does not establish by a preponderance of the evidence that the applicant entered the United States before January 1, 1982 and that she has continuously resided in the United States throughout the requisite period.

The lack of detail in the affidavits coupled with the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously 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 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.