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FILE:

MSC 06 047 11536

Office: LOS ANGELES

Date: SEP 02 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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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, California, 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. The director determined 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. The director denied the application, finding that the applicant had not met her burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, counsel asserts:

The decision distorted the record by assuming that a piece of evidence was for a [REDACTED] when it was for a [REDACTED]. [REDACTED] is the son of the Applicant. All the documentation about this particular [REDACTED] shows that his mother has been taking care of him for the period of time that is noted on the supporting documentation.

Counsel submits photocopies of documents that were previously provided.

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)(1).

For purposes of establishing residence and presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the alien attempted to file a completed Form I-687 application and fee or was caused not to timely file, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. Paragraph 11, page 6 of the CSS Settlement Agreement and paragraph 11, page 10 of the Newman Settlement Agreement.

An alien applying for adjustment of status 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. *See* 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 including affidavits 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.* 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 (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 submitted sufficient credible evidence to meet her burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record reflects that the applicant filed a Form I-821, Application for Temporary Protected Status, on August 13, 2002. The applicant indicated that she has been residing in the United States since November 1987.

In an attempt to establish continuous unlawful residence in the United States since prior to January 1, 1982, the applicant submitted:

- Affidavits notarized August 13, 2005, from [REDACTED] and [REDACTED] who indicated that they has been acquainted with the applicant for the past ten years.
- A letter dated August 15, 2005, from [REDACTED] who indicated that the applicant has been in his employ as a housekeeper for ten years.

- An affidavit from a relative, [REDACTED] who attested to the applicant's presence in the United States since 1979.
- An affidavit from [REDACTED] who indicated that the applicant has been a friend since 1981.
- The birth certificate and immunization record of her son, [REDACTED] which reflect that he was born on July 15, 1981 in Los Angeles, California and received vaccinations in October 1981, February and July 1982, July 1986 and December 1987.
- School transcripts of the applicant's son reflecting enrollment in kindergarten from September 10, 1986 to December 19, 1986 and in the first grade from December 9, 1987 to March 14, 1988. The transcript reflects that the applicant transferred on December 19, 1986 and again in March 1988.
- Several photographs the applicant claimed were taken during the requisite period.
- A Bank of America card valid from June 1986.

The applicant also submitted an affidavit from [REDACTED]; however, because the affiant did not sign the affidavit, it has no probative value.

On June 7, 2007, the director issued a Notice of Intent to Deny, which advised the applicant that the affidavits submitted did not contain sufficient objective evidence to which they could be compared to determine whether the attestations were credible, plausible, or internally consistent with the record. The applicant was advised that the school records of her son revealed a significant gap from December 19, 1986 to December 9, 1987 and his immunization record showed no vaccinations between July 1982 and July 1986. The applicant was advised of the information she listed on her Form I-821 regarding her residence in the United States. The applicant was also advised that the birth certificate of her child establishes her presence in the United States prior to January 1, 1982; however, the remaining documents do not establish *continuous* residence in the United State since that date through the date the applicant attempted to file her application.

The applicant, in response, indicated that she was amending her Form I-687 application as she departed the United States in December 1986 and returned 30 days later. The applicant indicated she also departed the United States in June 1987 for approximately two weeks. The applicant indicated that she has attempted, but is unable at this time, to obtain records from Cedar Sinai Hospital regarding his son's three-week stay, as well as her records from Los Angeles County to establish she was receiving medical services and welfare benefits for her son. The applicant indicated that she is unable to locate or obtain affidavits from the individuals who babysat her son from 1983 to 1985. The applicant submitted copies of documents that were previously provided along with:

- An additional affidavit from [REDACTED] who indicated he visited the applicant at their aunt's home prior to January 1, 1982, attested to the applicant's residence on [REDACTED] and provided a photograph as proof.

- An affidavit from [REDACTED] who indicated that she first met the applicant in Thanksgiving 1981 at a friend's home. The affiant indicated that she has no evidence to substantiate her contact with the applicant throughout the requisite period as her belongings were either lost or destroyed during the earthquake.
- Several photographs of the applicant's son taken during the requisite period.
- An Award of Recognition issued on December 12, 1986, from the Inglewood Unified School District addressed to the applicant's son.
- A letter dated July 1, 2007, from a representative of the Los Angeles County Treasurer and Tax Collector indicating that a clearance letter (regarding medical services and welfare benefits) would not be available until September 3, 2007.

The director determined that the applicant had failed to submit sufficient credible evidence establishing her continuous residence in the United States since prior to January 1, 1982, and, therefore, denied the application on August 2, 2007.

The statements issued by the applicant and counsel have been considered. However, the AAO does not view documents discussed above as substantive enough to support a finding that the applicant *continuously* resided in the United States throughout requisite period.

The applicant has not addressed the director's finding regarding her son's absence from the Los Angeles County Unified School District from December 20, 1986 to December 8, 1987.

The applicant has not addressed the fact that she indicated on her Form I-821 application to have entered the United States in November 1987. The applicant claimed no absence on her Form I-687 application during this period of time.

The applicant asserts that she was receiving public assistance for her son from the Los Angeles County during the statutory period. The applicant has had ample time to provide the clearance letter noted above; however, to date, no official documentation from the Los Angeles County has been presented to support her assertion. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The affidavits from [REDACTED] and [REDACTED] and the letter from Mr. [REDACTED] lack probative value as they only attest to knowing the applicant subsequent to the period in question. [REDACTED] in his affidavit, claims to have known the applicant since 1981, but failed to state the applicant's place of residence during the requisite period, provide any details regarding the nature of his relationship with the applicant or the basis for his continuing awareness of the applicant's residence.

Although the director informed the applicant that photographs could be submitted, the photographs provided have no identifying evidence that could be extracted which would serve to either prove or imply that the photographs were taken during the requisite period.

The applicant indicates that she departed the United States in December 1986 for only 30 days. However, on her Form I-687 application, the applicant listed her absence from the United States from December 1987 to March 1987. This absence exceeds the 45-day limit for a single absence and, therefore, the applicant has failed to establish continuous residence in the United States.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I. & N. Dec. 582 (BIA 1988).

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts 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 applicant's reliance upon documents with minimal probative value, it is concluded that the evidence submitted fails to establish continuous residence in an unlawful status in the United States during the requisite period.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he 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.