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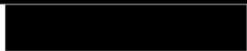


U.S. Citizenship
and Immigration
Services

21



FILE:



Office: LOS ANGELES

Date:

SEP 09 2009

MSC-05-264-11970

IN RE:

Applicant:



APPLICATION: Application for Temporary Resident Status under 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.

A handwritten signature in black ink, appearing to read "D. King".

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, or *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 of the Los Angeles office 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 (LULAC) Class Membership Worksheet. The director denied the application, finding that the applicant was ineligible for adjustment to temporary resident status because 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 time period.

On appeal, the applicant asserts that the evidence which she previously submitted establishes by a preponderance of the evidence that she continuously resided in the United States in an unlawful status for the duration of the requisite time period. The applicant has not submitted any additional evidence on appeal.

The AAO has reviewed all of the evidence and has made a *de novo* decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.¹

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) 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.

¹ The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has long been recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n.9 (2d Cir. 1989).

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 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. 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, 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).

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. *See* 8 C.F.R. § 245a.2(d)(6). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

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 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. 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. *Matter of Ho*, 19 I & N Dec. 582, 591-592 (BIA).

The issue in this proceeding is whether the applicant has established 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 1982 and lived in an unlawful status during the requisite period consists of several witness statements and several documents. The AAO has reviewed each document in its entirety to determine the applicant's eligibility; however, the AAO will not quote each witness statement in this decision. Some of the evidence submitted indicates that the applicant resided in the United States after May 4, 1988; however, because evidence of residence after May 4, 1988 is not probative of residence during the requisite time period, it shall not be discussed.

The record contains a fill-in-the-blank affidavit from [REDACTED] the applicant's cousin, who states that the applicant lived with her from December 20, 1981 at [REDACTED] in Compton, California through the date the affidavit was signed.

The applicant has submitted a fill-in-the-blank affidavit from [REDACTED] who states that she knows that the applicant has been in the United States since December 1981, although the affiant does not state the basis for her knowledge of this information. In addition, the affiant states that the applicant resided with her from January 10, 1988 for the duration of the requisite period. However, the affiant does not state the address at which she and the applicant resided together. For these reasons, the affidavit has minimal probative value.

The record contains three affidavits from [REDACTED] who states that she has knowledge that the applicant resided continuously in the United States since 1981. The affiant states that she employed the applicant as her live-in babysitter from February 1982 to September 1986 at a weekly wage of \$120.00. The statement of the affiant is inconsistent with the applicant's statement in the instant I-687 application that she worked for the affiant from February 1982 for the duration of the requisite statutory period. In addition, in one of her affidavits the affiant states that the applicant was absent from the United States on one day only, May 25, 1987, while in another affidavit the affiant states that the applicant was absent from the United States for 10 days, returning on June 10, 1987. Due to these inconsistencies, the affidavits of the affiant have minimal probative value.

Furthermore, the employment verification letter from [REDACTED] does not meet the requirements set forth in the regulations, which provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment. The regulation at 8 C.F.R. § 245a.2(d)(3)(i) provides that letters from employers must include: (A) Alien's address at the time of employment; (B) Exact period of employment; (C) Periods of layoff; (D) Duties with the company; (E) Whether or not the information was taken from official company records; and (F) Where records are located and whether the Service may have access to the records. If the records are unavailable, an affidavit-form letter stating that the alien's employment records are unavailable and why such records are unavailable may be accepted in lieu of subsections (E) and (F). The affiant's statement of employment fails to comply with the above cited regulation because it lacks considerable detail regarding the applicant's employment. For instance, the affiant does not provide the name or age of the child or children the applicant cared for, her daily duties as a babysitter, the number of hours or days she was employed, or the location at which she was employed.

Furthermore, the affiant does not state how she was able to date the applicant's employment. It is unclear whether she referred to her own recollection or any records she may have maintained. For these additional reasons, the affiant's statement regarding the applicant's employment is of little probative value.

In addition, although the witnesses claim to have personal knowledge of the applicant's residence in the United States during the requisite period, the witness statements 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 in the United States during the requisite period. 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 it probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. For instance, the witnesses do not state how they date their initial meeting with the applicant or specify social gatherings, other special occasions or social events when they saw and communicated with the applicant during the requisite period. The affiants also do not state how frequently they had contact with the applicant during the requisite period. The affiants do not provide sufficient details that would lend credence to their claimed knowledge of the applicant's residence in the United States during the requisite period. For these reasons the AAO finds that the witness statements do not indicate that their assertions are probably true.

The record contains seven receipts with dates from December 7, 1982 to April 1988. Although these receipts provide some evidence regarding the applicant's presence in the United States from December 7, 1982 to April 1988, the receipts do not establish the applicant's continuous residence for the duration of the requisite statutory period.

The applicant has submitted 19 pay stubs from Sparkle Cleaners in Long Beach, California dated from June 17, 1984 to October 22, 1986. However, these pay stubs are inconsistent with the applicant's statement in the instant I-687 application that she did not work for Sparkle Cleaners during the requisite statutory period.² In addition, the dates on the pay stubs all appear to have been altered from dates in the 1990's to reflect dates within the requisite statutory period. The altered dates are material to the applicant's claim, in that they have a direct bearing on the applicant's residence during the requisite period. Due to the alterations, these documents have minimal probative value. Furthermore, 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. *Matter of Ho*, 19 I & N Dec. 582, 591-592 (BIA). The alterations undermine the credibility of the applicant's claim of entry into the United States prior to January 1, 1982 and continuous residence in the United States during the requisite period.

² The applicant states that she worked for Sparkle Cleaners from April 1994 to 2000.

The record contains a copy of a 1988 federal income tax return and W-2 form for the applicant. These documents provide some evidence regarding the applicant's presence in the United States in 1988.

The applicant has submitted seven envelopes and a copy of one envelope. The applicant has marked these envelopes as having been received by her in the United States from 1982 to 1987. However, the probative value of these envelopes is limited in that the postmark dates are not legible. Therefore, these stamped envelopes do not establish the applicant's continuous residence throughout the requisite period. In addition, the addresses of seven of the envelopes are inconsistent with the testimony of the applicant in the instant I-687 application. According to the information contained in the instant I-687 application, six of the envelopes contain addresses at which the applicant resided after the requisite statutory period, and one of the envelopes contains an address not listed by the applicant as a residence during the requisite period.

The applicant has submitted a copy of a page from a 1983 pocket calendar which lists the applicant's name and address. This document does not establish the applicant's presence in the United States in 1983.

The remaining evidence in the record is comprised of copies of the applicant's statements, the instant I-687 application, the applicant's initial I-687 application filed in 1996 to establish the applicant's CSS class membership, a Form I-485 application to adjust to permanent resident status under the Legal Immigration Family Equity (LIFE) Act, an I-589 Application for Asylum, and an I-205 Warrant of Deportation.

The AAO finds in its *de novo* review that the record of proceedings contains many materially inconsistent statements from the applicant regarding her absences from the United States during the requisite statutory period.

The record reveals that the applicant's initial I-687 application listed an absence from the United States from May 1987 to June 1987. The class member worksheet listed one absence from the United States from May 25, 1987 to June 10, 1987.

At the time of filing her I-485 application, regarding her absences the applicant stated that she last entered the United States illegally in December 1981, although at the time of interview the applicant listed an absence from the United States from May 24, 1987 to June 10, 1987.

In addition, the record contains a Form I-589 Application for Asylum filed in 1995, in which the applicant stated that she last entered the United States on October 30, 1987.

Finally, the record contains a Form I-205 Warrant of Deportation dated August 15, 1996, in which the applicant is stated as having entered the United States on or about October 30, 1987.

As stated previously, to meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony, and the sufficiency of all the evidence

produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6). Here, the inconsistencies regarding the dates the applicant was absent from or lived and worked at a particular location within the United States are material to the applicant's claim in that they have a direct bearing on the applicant's 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 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. *Matter of Ho*, 19 I & N Dec. 582, 591-592 (BIA). The applicant has failed to provide probative and credible evidence of her continuous residence in the United States for the duration of the requisite period.

Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that she is eligible for the benefit sought. The various statements and affidavits currently in the record, which attempt to substantiate the applicant's residence and employment in the United States during the statutory period, are not sufficiently probative to support the applicant's claim that she maintained continuous residence in the United States throughout the statutory period.

Beyond the decision of the director, the record also reveals that on April 16, 1996, an immigration judge ordered the applicant deported from the United States, based upon the applicant having entered the United States on or about October 30, 1987 without inspection by an immigration officer. See Section 212(a)(6)(A)(i) of the Act. The applicant did not reveal this arrest on the instant application or in her statement. Although this ground of inadmissibility is waivable, even if the applicant were to be granted a waiver she remains ineligible for failure to establish her continuous unlawful residence.

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 on this basis.

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