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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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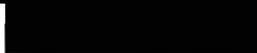


U.S. Citizenship
and Immigration
Services

L1



FILE:



Office: LOS ANGELES

Date:

FEB 05 2010

MSC 04 276 10043
MSC 09 076 11145-APPEAL

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: On July 2, 2004, the applicant filed her current Form I-687, Application for Status as a Temporary Resident Under Section 245A of the Immigration and Nationality Act, which was approved on May 19, 2005. On November 19, 2008, the applicant's temporary resident status was terminated by the Director, Los Angeles. In so finding, the director noted that at her interview, the applicant stated that she never went to school in the United States, even though she was only twelve years old at the time she initially entered this country. The decision to terminate is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The status of an alien lawfully admitted for temporary residence may be terminated at any time in accordance with section 245A(b)(2) of the Act if it is determined that the alien was ineligible for temporary residence under section 245A of the Act. 8 C.F.R. § 245a.2(u)(1)(i). Termination of the status of any alien previously adjusted to lawful temporary residence shall act to return such alien to the unlawful status held prior to the adjustment, and render him or her amenable to exclusion or deportation proceedings under section 236 or 242 of the Act, as appropriate. 8 C.F.R. § 245a.2(u)(4).

On appeal, the applicant states she was nervous at her interview and that she is eligible for temporary resident status based on the evidence that she presented.

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 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).

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 request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, to deny the application.

The pertinent evidence in the record is described below.

1. Two Affidavit of Witness statements from [REDACTED] who states he knows the applicant has resided in the United States since 1981.
2. A school attendance letter from a person with an indecipherable name, the District/School Custodian of Records of Lynwood Unified School District in Lynwood, California, who states the applicant attended “[REDACTED]” beginning in February 1982 and ending in January 1985.
3. A letter from [REDACTED] of [REDACTED] in el Monte, California, who states the applicant was a patient at the clinic from 1981 to 1983.
4. The applicant’s unsigned patient identification form dated October 3, 1986 from the Los Angeles County Harbor-UCLA Medical Center.
5. The applicant’s invoice dated for her order on May 28, 1987 from [REDACTED] in Los Angeles, California.

On her Form I-687 filed on July 2, 2004, the applicant stated that her only absences from the United States dating back to January 1, 1982 were from was from December 1985 returning the same month and from June 1987 to July 1987 “to have child with care of parents.” However, her Form G-325 A, Biographic Information, she signed on April 26, 2002, indicates that she was married in Mexico on June 6, 1985. The difference between the applicant’s statement on her Form I-687 and her Form G-325A casts doubt on her claim that she resided continuously in the United States during the requisite period.

The affiant (Item # 1 above) claims to have known the applicant for a substantial length of time, in this case since 1981 in the United States. However, his notarized statements are not accompanied by any documentary evidence such as photographs, letters or other documents establishing the affiants' personal relationships with the applicant in the United States during the 1980s. In view of these substantive shortcomings, the AAO finds that the statement has little probative value. It is not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through the date she attempted to file a Form I-687 or was caused not to timely file during the original filing period from May 5, 1987 ending on May 4, 1988. The school attendance letter (Item # 2) is at variance with the testimony she provided that she provided the director, namely that she never went to school in the United States, even though she was only twelve years old at the time she initially entered this country.

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. Further, the applicant must resolve any inconsistencies in the record with competent, independent, objective evidence. Attempts to explain or reconcile such inconsistencies, absent competent objective evidence sufficient to demonstrate where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). These inconsistencies cast doubt not only on the evidence containing the conflicts, but on all of the applicant's evidence and all of his assertions.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate entry into the United States prior to January 1, 1982, and continuous residence during the requisite period. The applicant's asserted absence and residential histories on her Form I-687 are accompanied by inconsistent evidence.

The evidence must be evaluated not by the quantity of evidence alone but by its quality. 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 its amenability to verification. Given the absence of credible supporting documentation, the applicant has failed to meet his burden of proof and failed to establish continuous residence in an unlawful status in the United States during the requisite period. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act. The applicant's temporary resident status was correctly terminated. The director's decision is affirmed.

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