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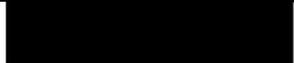
**U.S. Citizenship
and Immigration
Services**

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FILE:



Office: LOS ANGELES

Date:

FEB 25 2010

MSC 05 224 50039

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.

IN BEHALF OF APPLICANT:



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 terminated by the Director, Los Angeles, California. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director determined that the applicant had not demonstrated that she had continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that he attempted to file a Form I-687, Application for Status as a Temporary Resident, with the Immigration and Naturalization Service or the Service (now United States Citizenship and Immigration Services or USCIS) in the original legalization application period between May 5, 1987 to May 4, 1988. The director further determined that the applicant had not demonstrated that she was a class member in a requisite legalization class action lawsuit because she provided a notarized statement in which she admitted that she did not depart this country during the required period. Therefore, the director concluded that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and section 245A of the Immigration and Nationality Act (Act) and terminated the applicant's temporary resident status.

On appeal, counsel asserts that the applicant's statements and clarifications are true and correct and must be given credibility since they explain the inaccuracies of the information entered on the applications and affidavits filed on her behalf. Counsel contends that any discrepancies contained in testimony relating to the applicant are trivial and both immaterial and irrelevant to the applicant's claim of residence in this country for the period in question.

Although the director determined that the applicant had not established that she was eligible for class membership pursuant to the CSS/Newman Settlement Agreements, the director treated the applicant as a class member in terminating the applicant's temporary residence on the basis of whether the applicant had established continuous residence in the United States for the requisite period. Consequently, the applicant has neither been prejudiced by nor suffered harm as a result of the director's finding that the applicant had not established that she was eligible for class membership. The adjudication of the applicant's appeal as it relates to her claim of continuous residence in the United States since prior to January 1, 1982 shall continue.

The status of an alien lawfully admitted for temporary residence may be terminated at any time if it determined that the alien was ineligible for temporary residence under section 245A of the Act. 8 C.F.R. § 245a.2(u)(1)(i).

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. *See* Paragraph 11, page 6 of the CSS Settlement Agreement and paragraph 11, page 10 of the Newman Settlement Agreement.

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 including affidavits is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and, identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

The regulation at 8 C.F.R. § 245a.2(d)(3)(v) states that attestations by churches, unions, or other organizations to the applicant's residence by letter must: identify applicant by name; be signed by an official (whose title is shown); show inclusive dates of membership; state the address where applicant resided during membership period; include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; establish how the author knows the applicant; and, establish the origin of the information being attested to.

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.

The record shows that the applicant had previously asserted a claim to class membership in one of the legalization class-action lawsuits, and as such was permitted to file a separate Form I-687 application on March 15, 1990. At part #16 of the Form I-687 application where applicants were asked to list the date they last entered the United States, the applicant listed October 1981 as her first entry into this country and February 1988 as her last entry. Furthermore, at part #33 of this Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant listed [REDACTED] in Whittier, California as her only residence since she entered this country through the date this Form I-687 application was submitted on March 15, 1990. In addition, at part #34 of this Form I-687 application where applicants were asked to list all affiliations or associations with clubs, organizations, churches, unions, business, etc., the applicant listed membership with “Sikh Temples” in Los Angeles, California since 1981. Finally, at part #36 of this Form I-687 application where applicants were asked to list all employment since entry, the applicant listed “not employed” and “housewife” since she entered the United States through the date this Form I-687 application was submitted on March 15, 1990.

The record reflects that the applicant filed a Form I-485, Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act, and corresponding Form G-325A, Report of Biographic Information, on February 15, 2002. On both the Form I-485 application and Form G-325A biographic report, the applicant indicated that she first entered the United States in September 1981.

The record further shows that the applicant subsequently submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to USCIS on November 15, 2004. At part #30 of the Form I-687 application (the difference in the numbering of parts on the two separate Form I-687 applications is explained by the fact that the application format was revised as of October 26, 2005) where applicants were asked to list all residences in the United States since first entry, the applicant listed [REDACTED] in Hawthorne, California from September 1981 to November 1987, [REDACTED] in Bakersfield, California from November 1987 to June 1989, and [REDACTED] in Bakersfield, California from June 1989

to March 1991. Furthermore, at part #31 of this Form I-687 application where applicants were asked to list all affiliations or associations with clubs, organizations, churches, unions, business, etc., the applicant listed membership with "ISKCON (Hare Krishna) Temple" in Los Angeles, California since September 1981. In addition, at part #33 of the Form I-687 application where applicants were asked to list all employment since entry, the applicant indicated that she was employed as a housekeeper by [REDACTED] from September 1981 to November 1987 at the same address in Hawthorne, California she listed as her residence for these same dates at part #30 of this Form I-687 application and employment as a housekeeper for [REDACTED] at [REDACTED] in Bakersfield, California from November 1987 to December 1991.

In support of her claim of continuous residence in this country since prior to January 1, 1982, the applicant submitted a letter of membership containing the letterhead of ISKCON of New Dvaraka in Los Angeles, California. The letter is signed by [REDACTED] who listed his position as Director of Membership and [REDACTED]. Mr. [REDACTED] stated that the applicant was a true Hindu devotee who had been frequenting the temple regularly since 1980. However, [REDACTED] failed to include the applicant's address of residence during her entire period of affiliation with this religious organization as required under 8 C.F.R. § 245a.2(d)(3)(v). Further, it must be noted that the applicant testified that she had been a member of this religious organization beginning in September 1981 at part #31 of the Form I-687 application filed on November 15, 2004, rather than 1980 as attested to by [REDACTED]. In addition, the applicant failed to list any affiliation with ISKCON of New Dvaraka at part #34 of the Form I-687 application filed on March 15, 1990, but instead indicated that she had been associated with Sikh Temples since 1981.

The applicant provided two affidavits dated December 17, 2001 and October 9, 2003 that are both signed by [REDACTED]. In the affidavit dated December 17, 2001, [REDACTED] stated that he had known the applicant for twenty years and she resided in his home at [REDACTED] in Hawthorne, California from September 12, 1981 to November 18, 1987. In the affidavit dated October 19, 2003, [REDACTED] declared that he had known the applicant for over twenty years when his wife and the applicant first met in a store. [REDACTED] noted that his wife suffered a heart attack on August 1981 and that he asked the applicant to reside in his home and assist in the care of his wife beginning on September 12, 1981, and that she continued to live there until November 18, 1987. [REDACTED] stated that the applicant subsequently got her own apartment in Hawthorne, California. However, [REDACTED] failed to provide any explanation as to why he had failed to mention that the applicant began residing in his home in order to assist in the care of his ill wife in his prior affidavit dated December 17, 2001.

The applicant included two affidavits dated November 24, 2001 and October 16, 2003 that are both signed by [REDACTED]. In the affidavit dated November 24, 2001, [REDACTED] declared that the applicant lived with him at [REDACTED] and then [REDACTED] in Bakersfield, California from November 1987 to December 1991. In the affidavit dated October 16, 2003, [REDACTED] noted that he had known the applicant and her family for over thirty years when she was living in India and that he subsequently met her in Los Angeles, California in November 1986. [REDACTED] indicated that he was subsequently needed domestic help because he

was in poor health and asked the applicant to move into his home to provide domestic help in exchange for food and minor allowances. [REDACTED] reiterated that the applicant lived with him at [REDACTED] and then [REDACTED] in Bakersfield, California from November 1987 to December 1991. However, [REDACTED] failed to provide any explanation as to why he had failed to mention that the applicant began residing in his home in order to provide domestic help in his prior affidavit dated November 24, 2001.

It must be noted that the conflicting information and contradictions provided by the applicant herself on the applications and accompanying supporting documents cited above seriously undermines critical elements of her claim of residence in the United States since prior to January 1, 1982. Although [REDACTED] and [REDACTED] provided testimony that tends to correspond with the applicant's testimony on the Form I-687 application filed on November 15, 2004, their testimony directly contradicted the applicant's prior testimony relating to her place of residence, affiliation with religious organizations, and employment on the Form I-687 application filed on March 15, 1990.

The record reflects that the applicant was granted temporary resident status on May 19, 2005. The applicant subsequently submitted a Form I-698, Application for Adjustment from Temporary to Permanent Resident Status, on March 18, 2007. The applicant appeared for an interview relating to her Form I-698 adjustment application at the USCIS office in Los Angeles, California on January 31, 2008. The notes of the interviewing officer reflect that testified under oath that she first entered the United States by crossing the border from Mexico without inspection in March 1980 and that she was taken to Bakersfield, California where she had friends. The applicant's testimony that she entered the country in March 1980 directly contradicted all of her prior testimony in the record in which she claimed that the earliest she had entered the United States was September 1981.

The director determined that the applicant's testimony and the evidence submitted by her could not be considered credible and that she failed to establish that she continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that she attempted to file a Form I-687 application in the original legalization application period between May 5, 1987 to May 4, 1988. Therefore, the director concluded that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and section 245A of the Act and terminated the applicant's temporary resident status on May 23, 2008.

On appeal, counsel asserts that any discrepancies cited by the director as a basis for terminating the applicant's temporary residence were the result of mistakes made by the actual preparers of the applications contained in the record. However, a review of the Form I-687 application filed on March 15, 1990, the Form I-485 LIFE Act application, the Form I-687 application filed on November 15, 2004, and the Form I-698 adjustment application reveals that all but the Form I-485 LIFE Act application were prepared the applicant herself. More importantly, the fact remains the applicant signed all of the applications noted above certifying that the information she provided was *true* and *correct* despite the contradictory nature of her own testimony.

Counsel contends that any discrepancies contained in testimony relating to the applicant are trivial and both immaterial and irrelevant to the applicant's claim of residence in this country for the period in question. Counsel asserts that the decisions reached in *Cordero-Trejo v. INS*, 40 F.3d 482 (1st Cir.1994) and *Bojorques-Villanueva v. INS*, 194 F.3d 14 (1st Cir. 1999), both support his contention. However, counsel's contention is without merit as the discrepancies and contradictions in testimony contained in the record relating to the applicant's place of residence, associations with religious organizations, and employment during the period in question are not trivial, but instead are both directly material and relevant to her claim of residence in the United States since prior to January 1, 1982.

The conflicting and contradictory testimony contained in the record relating to the applicant's place of residence, associations with religious organizations, and employment seriously undermines the credibility of her claim of residence in this country for the requisite period, as well as the credibility of the documents submitted in support of such claim. Pursuant to 8 C.F.R. § 245a.2(d)(3), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. The applicant has failed to submit sufficient credible documentation to meet her burden of proof in establishing that she has resided in the United States since prior to January 1, 1982 by a preponderance of the evidence as required under both 8 C.F.R. § 245a.2(d)(3) and *Matter of E- M-*, 20 I&N Dec. 77 (Comm. 1989).

Under these circumstances, it cannot be concluded that the applicant has established that the claim of continuous residence from before January 1, 1982, through the date of filing is credible and probably true. Therefore, the applicant has not established eligibility for temporary residence under the terms of the CSS/Newman Settlement Agreements and section 245A of the Act. As the applicant has not overcome the grounds for termination of status, the appeal must be dismissed.

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