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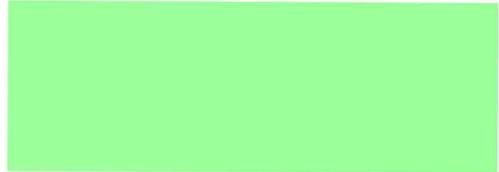
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529 - 2090



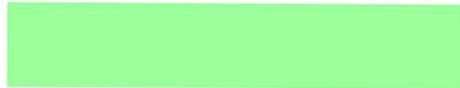
U.S. Citizenship
and Immigration
Services



DATE: OCT 17 2013 OFFICE: HOUSTON



IN RE:



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:

Enclosed please find the decision of the Administrative Appeals Office in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The director of the Houston office terminated the temporary resident status of the applicant. The Administrative Appeals Office (AAO) summarily dismissed an appeal. The AAO will reopen, *sua sponte*, and will dismiss the appeal on the merits.

The director initially approved the applicant's application for temporary resident status, filed 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). Subsequently, the director issued a notice of intent to terminate temporary resident status and ultimately terminated such status. The record reflects that the director of the Houston office terminated the applicant's temporary resident status, finding that the applicant had not established by a preponderance of the evidence that she had continuously resided in the United States for the duration of the requisite period. On November 30, 2012, the AAO summarily dismissed the appeal, in part, finding that the applicant had failed to submit a brief. Subsequently, the applicant, through counsel, filed a brief.

On appeal, counsel asserts that the applicant has established her unlawful residence during the requisite period. Counsel further asserts that the director failed to indicate what efforts, if any, were made to contact the affiants to verify their testimony. Counsel failed to address issues raised by the director as to the insufficiency of and inconsistencies in the evidence.

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).

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 245(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).

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).

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 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 issue in this proceeding is whether the applicant 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 throughout the requisite period. 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 affidavits of relationship written by friends. The AAO has reviewed the evidence to determine the applicant’s eligibility.

The record contains numerous witness declarations. The declarations are general in nature and state that the witnesses have knowledge of the applicant's residence in the United States for all, or a portion of, the requisite period. 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 statements must

do more than simply state that a witness 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, by virtue of that relationship, does have knowledge of the facts alleged. For instance, the witnesses do not state how they date their initial meeting with the applicant in the United States, or specify social gatherings, other special occasions or social events when they saw and communicated with the applicant during the requisite period. Several witnesses do not state how frequently they had contact with the applicant during the requisite period. The witnesses 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 declarations from [REDACTED] contain statements that contradict information provided by the applicant on her Form I-687. For example, in a declaration dated June 9, 2005, Ms. [REDACTED] states that the applicant resided with her in Arizona from 1981 to 1994 at [REDACTED] in [REDACTED] Arizona. However, the applicant states in her Form I-687 application that from 1981 to 1994 she resided at [REDACTED] Arizona and at [REDACTED] Arizona from 1994 to 1995. Further, Ms. [REDACTED] states that the applicant traveled with her to Mexico from December 1987 to January 1988 and that "other than staying with an aunt for a couple of weeks here and there," the applicant resided with her and her husband the entire rest of the time. As Ms. [REDACTED]'s declaration contradicts information provided by the applicant in her Form I-687, it is insufficient to support a finding that the applicant unlawfully resided in the United States during the requisite period.

The contradictions 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. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent 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. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Here, the applicant has not addressed the contradictions regarding her continuous residence and has not submitted new evidence on appeal in an attempt to resolve the inconsistencies.

Accordingly, the AAO finds that the director's "Notice of Intent to Terminate" and "Notice of Decision" contain specific, cogent reasons for termination of the applicant's temporary residence status. We further find that the inconsistencies and contradictions cited by the director are supported by the record evidence, and the applicant has not presented additional evidence on appeal relevant to the grounds for termination. These inconsistencies 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. As stated previously, 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. *See Matter of Ho, supra.*

The record contains additional inconsistencies regarding the dates of the applicant's employment in the United States during the requisite period, as well as the dates of her absences from the United States during that period. In the instant Form I-687 application, the applicant lists employment in the United States from 1981 through the end of the requisite period as a self-employed babysitter, and one absence from the United States during that period, from December 1987 to January 1988. However, in the initial undated Form I-687 application submitted by the applicant to establish her CSS class membership, the applicant indicated she was self-employed as a babysitter from 1987 through the end of the requisite period. In a Form I-485 application to adjust resident status under the Legal Immigration Family Equity Act (LIFE) filed by the applicant in 2003, the applicant listed her date of last arrival to the United States as October 12, 1987. However, in the instant Form I-687 application, and at the time of her interview on October 12, 2006, the applicant failed to list any absences from the United States in October 1987. These inconsistencies 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.

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. Accordingly, the applicant's temporary resident status was correctly terminated, as the applicant was ineligible for temporary resident status.

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