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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: JUL 26 2005

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 your case 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.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application for temporary resident status was denied by the Director, Western Regional Processing Facility, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director denied the application because the applicant failed to establish that she had resided continuously in the United States from prior to January 1, 1982 through the date the application was filed. The director's finding was based on information the applicant had provided in a prior proceeding.

On appeal, the applicant states that the information provided in the prior proceeding was incorrect. She asserts that she has truly resided in the United States since 1981.

An applicant for temporary resident status must establish that he or she entered the United States before January 1, 1982, and continuously resided in the United States in an unlawful status since such date and through the date the application is filed. See Section 245A(a)(2)(A) of the Act, 8 U.S.C. § 1255a(a)(2)(A).

An applicant for temporary resident status under section 245A of the Act has the burden to establish 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 and is otherwise eligible for adjustment of status under this section. 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. 8 C.F.R. § 245a.2(d)(6).

In the denial notice the director stated that, on an asylum application filed on December 8, 1982, the applicant stated that she *first* entered the United States on November 15, 1982. However, in that block on the asylum application, the applicant was asked to indicate when she *last* entered the United States, and she indicated November 15, 1982. Nevertheless, the applicant made no statement on the application that even implied that she had been in the United States before. By indicating when she last entered the United States, she would have also been indicating when she first entered, if it was her only entry.

The director also pointed out that, in a letter to the Immigration and Naturalization Service (INS) dated December 6, 1982, the applicant stated that she arrived in the United States on November 15, 1982. More importantly, on Form G-325A dated December 6, 1982, the applicant indicated that she resided in El Salvador until November 1982. None of these statements conflict; it is concluded that the applicant's claim in the asylum proceeding was that she resided in El Salvador until November 1982. Her claim in this temporary residence (legalization) proceeding is that she began residing in the United States in June 1981, departed for two weeks, and returned in November 1982.

The applicant has submitted payroll records and other *contemporaneous* evidence of residence in the United States covering the period of December 1982 through the time she filed her application in 1988. Regarding her claimed residence for the period of June 1981 to November 1982 she has furnished only three statements attesting to her residence. The affidavit from her mother, who was an asylum applicant herself, states the mother took care of the applicant's child while the applicant was working. It is noted that the applicant has not provided any evidence of employment for the time prior to December 1982.

A brief typed note from A.A. [REDACTED] on letterhead stationery, indicates the applicant participated in Alcoholics Anonymous meetings since December 1981 in Mountain View, California. On her application for temporary residence, the applicant, when asked, indicated that she belonged to other organizations, but did not mention this one.

Finally, a letter from the Pastor at Saint Anthony's Church in Menlo Park, California states the applicant attended Mass there from 1981 to 1983.

As stated above, the inference to be drawn from the documentation provided shall depend in part on the *extent* of the documentation. The minimal evidence covering the period of 1981 through late 1982 cannot be considered extensive. It must be reiterated that the applicant's contemporaneous documentation all relates to the period after November 1982, which correlates very well to her initial claim in the asylum proceeding of having moved to the United States at that point.

Importantly, when the applicant applied for temporary residence in 1988, she was asked to indicate on the application whether she had any other record with the Immigration and Naturalization Service. She failed to answer "yes", in spite of the fact that she had applied for asylum six years earlier.

An applicant also raises questions of credibility when asserting a substantially revised claim to eligibility in a later proceeding. In such instances, Citizenship and Immigration Services may require credible evidence to support the substantially revised claim as well as a *complete* explanation concerning the applicant's failure to advance this claim initially. The applicant has not attempted to provide a complete explanation as to her failure to make the more beneficial claim initially. She simply states that the information originally provided was incorrect. She also fails to provide any documentation on appeal to support her statements.

In summary, the applicant clearly did not claim residence in the United States since 1981 in the asylum process. Only after another benefit was made available to her, legalization, did she claim to have resided in the United States since 1981. The applicant has submitted little evidence in support of the new claim, and none of it is contemporaneous. Finally, she has not provided a complete explanation as to why the new claim was not made initially.

Under these circumstances, the applicant has failed to establish that the claim of continuous residence since 1981 through the date of filing is credible and probably true. Therefore, the applicant has not demonstrated eligibility by a preponderance of the evidence as required by 8 C.F.R. 245a.2(d).

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