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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

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[Redacted]

FILE:

[Redacted]

Office: BOSTON

Date:

MSC-06-053-10791

MAR 10 2008

IN RE:

Applicant:

[Redacted]

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:

[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has 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, 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 denied by the District Director, Boston, Massachusetts. The decision 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 Class Membership Worksheet. The director determined that 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 period. The director denied the application, finding that the applicant had not met her burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, counsel asserts the applicant's claim of eligibility for temporary residence status.

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. See CSS Settlement Agreement paragraph 11 at page 6 and 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).

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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on November 22, 2005. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant showed her first address in the United States to be [REDACTED] New York, New York, from 1981 to 1993. Similarly, at part #33 the applicant indicated that [REDACTED] employed her as a housekeeper/babysitter in New York, New York, from 1981 to 1988.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted copies of earnings statements, unemployment compensation statements, Internal Revenue Service tax documents, medical records, employment letters, and other documentation that are dated subsequent to the requisite period, and therefore, does not support the applicant's claim of continuous unlawful residence. The applicant submitted copies of two money transfer receipts from [REDACTED] dated 1981 and 1983 that had not been translated. 8 C.F.R. § 103.2(b)(3) requires that any document containing foreign language submitted to Citizenship and Immigration Services (CIS) shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. Because the applicant failed to submit certified translations of the document, the AAO cannot determine whether the evidence supports the petitioner's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any evidentiary weight in this proceeding. It is further noted that there is nothing in the record to demonstrate that the receipts were issued to the applicant in the United States.

The applicant submitted affidavits from [REDACTED] and [REDACTED] in which they stated that they have known the applicant since 1981, that they have become friends with the applicant, and that they have kept in contact with her. There is nothing in the record to demonstrate that the frequency with which the affiants maintained communications with the applicant. Here, the affiants have not provided evidence that they themselves were present in the United States during the requisite period. Though not required to do so, neither [REDACTED], or [REDACTED] have included proof of their identity with their affidavits. Although the affiants attested to the applicant's residence in the United States since 1981, they have failed to provide any relevant and verifiable testimony, such as the applicant's address(es) of residence in this country, to corroborate the applicant's claim of residence in the United States since prior to January 1, 1982. Because the affidavits are significantly lacking in detail they can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

- The applicant also submitted an affidavit from [REDACTED] in which she stated that the applicant lived with her at [REDACTED] New York, New York, from 1981 to 1988, and that the applicant paid her \$50.00 per week in rent. Here, the affiant's statements are inconsistent with the applicant's statement on her Form I-687, at part #30 where she listed her first address in the United States to be [REDACTED] New York, New York, from 1981 to 1993. This inconsistency calls into question the affiant's ability to confirm that the applicant resided in the United States during the requisite period. Because this affidavit contains testimony that conflicts with what the applicant showed on her Form I-687, doubt is cast on assertions made in the affidavit. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). This affidavit is significantly lacking in detail and it conflicts with other evidence in the record. Therefore, only minimal weight can be afforded to it in establishing that the applicant resided in the United States during the requisite period.

The applicant submitted an employment affidavit from [REDACTED] in which she stated that she employed the applicant from 1981 to May of 1988 as a housekeeper and babysitter and earned \$125.00 per week. Here, the affidavit does not conform to regulatory standards for attestations by employers. Specifically, the affiant does not specify the address(es) where the applicant resided throughout the claimed employment periods, nor does she indicate whether the employment information was taken from her records. Neither has the availability of the records for inspection been clarified. 8 C.F.R. § 245a.2(d)(3)(i). In addition, the record does not contain copies of pay statements, personnel records, Internal Revenue Service records, W-2 Forms, certification of filing of Federal income tax returns, or time cards that pertain to the requisite period to corroborate the assertions made by the affiant.

In denying the application the director indicated that the applicant had failed to present sufficient evidence to substantiate her claim of having entered the United States in an illegal status prior to January 1, 1982.

On appeal, counsel states that the applicant has submitted sufficient credible evidence to meet her burden of proof of showing that she was in the United States since 1982. Counsel further states that the director failed to articulate a sound reason for the denial. The applicant does not submit any additional evidence on appeal.

Contrary to counsel's assertions, the applicant has not provided any contemporaneous evidence of residence in the United States prior to January 1, 1982, and has submitted minimal evidence of her presence in the country since 1983. It is noted that the attestations from [REDACTED] and [REDACTED] are not specific and fail to identify the applicant's addresses during the requisite period. Furthermore, the statement of [REDACTED] concerning the applicant's residence, is in conflict with the information the applicant provided on her Form I-687 application. It is also noted that the employment affidavit from Nortia Iglesias fails to conform to regulatory standards for attestations by employers. 8 C.F.R. § 245a.2(d)(3)(i).

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous unlawful residence in the United States throughout the requisite period seriously detracts from the credibility of this claim. 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 amenability to verification. Given the applicant's contradictory statement on her I-687 application and her reliance upon documents with minimal probative value, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States for the requisite period 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.