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

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[redacted]

FILE: [redacted] Office: EL PASO, TX Date: AUG 11 2009

MSC 06 097 10837

IN RE: Applicant: [redacted]

APPLICATION: Application for Temporary Resident Status under 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. If your appeal was dismissed or rejected, all documents have been forwarded to the U.S. Citizenship and Immigration Services National Records 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 if the matter was remanded for further action, the record of proceedings was returned to the office that originally issued a decision in your case, and you will be contacted.

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The 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), was denied by the Director, El Paso, Texas. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because he found that the evidence in the record failed to demonstrate that it is more likely than not that the applicant resided continuously in the United States from a date prior to January 1, 1982 and throughout the statutory period.

On appeal, the applicant asserted that she has established continuous residence throughout the statutory period and that she is otherwise eligible to adjust to temporary resident status.

The AAO maintains plenary power to review this matter on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp.*, NTSB, 925 F.2d 1147, 1149 (9th Cir. 1991). The federal courts have long recognized the AAO's *de novo* review authority. *See,* e.g. *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). The AAO considers all pertinent evidence in the record, including new evidence properly submitted on appeal.[1]

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

[1] The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in this case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

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 regulations provide an illustrative list of contemporaneous documents that an applicant may submit, the list also permits the submission of affidavits and any other relevant document. *See* 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The application and other statements of the applicant, both oral and written, are evidence to be considered. *See Matter of E-M-*, 20 I&N Dec. 77 at 79. The applicant's statements must not be the applicant's only evidence used to establish eligibility, but they should be viewed as valid evidence. *Id.*

The absence of contemporaneous evidence is not necessarily fatal to the applicant's claim of continuous residence in the United States during the statutory period. *See Id.* at 82-83. Affidavits that are consistent and verifiable may be sufficient to demonstrate continuous residence. *See Id.*

Documentary evidence may be in the format prescribed by U.S. Citizenship and Immigration Services (USCIS) regulations. *See Id.* at 80. For example, 8 C.F.R. § 245a.2(d)(3)(i) states that a letter from an employer should be signed by the employer under penalty of perjury and "state the employer's willingness to come forward and give testimony if requested." *Id.* Letters from employers that do not comply with such requirements do not have to be accorded as much weight as letters that do comply. *Id.* However, even if not in compliance with this regulation, a letter from an employer should be considered as a "relevant document" under 8 C.F.R. § 245a.2(d)(3)(iv)(L). *Id.* Also, affidavits that have been properly attested to may be given more weight than a letter or statement. *Id.* Nonetheless in determining the weight of a statement, it should be examined first to determine upon what basis it was made and whether the statement is internally consistent, plausible and credible. *Id.* What is most important is whether the statement is consistent with the other evidence in the record. *Id.*

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. *Id.* at 79-80. In evaluating the evidence, *Matter of E-M-* also states 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 or applicant 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, to deny the application or petition.

At issue in this proceeding is whether the applicant (1) entered the United States before January 1, 1982; and (2) continuously resided in the United States in an unlawful status throughout the statutory period. The documentation that the applicant submitted in support of her claim of having arrived in the United States before January 1982 and of having continuously resided in the United States throughout the statutory period consists of affidavits and statements written by former employers/former housemates, friends, acquaintances and relatives, and administrators of religious organizations to which the applicant claims to have belonged. The applicant did not provide any independent, contemporaneous evidence to support the assertion that she resided continuously in the United States throughout the statutory period.[2]

On or near October 22, 1993, the applicant applied for class membership in a legalization class-action lawsuit and filed Form I-687, Application for Status as a Temporary Resident. On January 5, 2006, she filed the instant Form I-687.

On June 20, 2008, the director issued a notice of decision denying the Form I-687.

The director indicated in the notice of decision that the applicant's evidence of continuous residence during the statutory period was lacking in that, for example, the statements of [redacted] and [redacted] in the record indicate that the applicant resided at [redacted] El Paso from 1980 through 1982.[3] However, on the 2006 Form I-687 in the record the applicant stated that she resided at [redacted] El Paso from 1980 through 1987. Also, one statement in the record indicates that during 1988 the applicant resided at [redacted], Houston, Texas. However, on the 2006 Form I-687 in the file the applicant stated that she resided at

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[2] The applicant submitted a copy of a June 18, 1986 electric bill for [redacted] El Paso, Texas. The applicant testified that [redacted] is her aunt and that she lived at her home. However, the Form I-687, Application for Temporary Resident Status, lists a different address for the applicant in 1986, as do her affidavits and statements in the record. The electric bill does not make reference to the applicant. This bill is not probative in this matter.

[3] The AAO notes that the director is correct in that these statements place the applicant at the [redacted] address during the initial portion of the statutory period, not the latter portion as listed on the 2006 Form I-687. However, these statements do not indicate that the applicant resided at [redacted] from 1980 through 1982. Rather, three of the statements, that of [redacted] and [redacted] indicate that the applicant resided at [redacted] from 1981 through an unspecified date. The statement of [redacted] indicates that in 1980 the applicant began residing at the [redacted] address and that on an unspecified date after that she began residing at the Santa [redacted] address. It is also noted that on the Form for Determination of Class Membership in *CSS* which the applicant signed on October 13, 1993, the applicant stated that she first entered the United States during November 1981, and that the 1993 Form I-687 in the record indicates that the applicant did not begin residing in the United States until August 1991.

[redacted], El Paso from 1987 through 1991.[4] The director found that these discrepancies in the evidence undermined the credibility of the applicant's claim that she resided continuously in the United States throughout the relevant period.

The director stated further that on January 12, 1988 the applicant received a Border Crossing Card and that in order to receive that card she must have shown U.S. officials that she was residing in Mexico prior to the issuance of that card. The director also found that this evidence undermined the credibility of the applicant's claim that she resided continuously in the United States throughout the requisite period.

The director concluded that the applicant had failed to establish continuous residence throughout the statutory period and denied the application.

On appeal, the applicant submitted a statement which indicated that her mother prepared her application for the Border Crossing Card which she received in January 1988. The applicant indicated that she does not know how her mother managed to obtain the card for her even though she had resided continuously in the United States since November 1981. The applicant stated that she only knows that her mother wanted the applicant to have the card to protect her from having any problems with U.S. immigration officials. She indicated that the reason that the record is not consistent regarding which years she lived on [redacted] and which years she lived on [redacted] is because she was constantly moving back and forth between these addresses in order to conceal her presence in the United States from U.S. immigration officials. She indicated that the reason that the record is not consistent regarding whether she lived in Houston or in El Paso during 1988 is because she only lived in Houston temporarily. The applicant indicated that she lived in Houston with the father of her children.[5] Also she stated that she could not provide additional evidence because her mother destroyed all evidence that the two of them had resided in the United States because she believed that doing so might help protect them from having problems if U.S. officials were to question them.

The inconsistencies in the record relating to where the applicant resided during the statutory period cast doubt on her assertion that she resided in the United States throughout the statutory period. The discrepancies in the applicant's evidence also cast doubt on the authenticity of all the applicant's claims and on all the evidence of record.

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. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

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[4] The AAO notes that Houston is approximately 750 miles from El Paso.

[5] On the affidavit of [redacted] dated October 20, 1993 in the record, [redacted] attested that the applicant lived with her in Houston during 1988.

This office finds that the various statements and affidavits in the record which purport to substantiate the applicant's residence in the United States during the statutory period are not objective, independent evidence such that they might overcome the inconsistencies in the record regarding the applicant's claim that she maintained continuous residence in the United States from a date prior to January 1, 1982 and throughout the statutory period, and that these documents are not probative in this matter.

The applicant has failed to establish continuous residence in an unlawful status in the United States from some date prior to January 1, 1982 and throughout the statutory period. Thus, she is not eligible for adjustment to temporary resident status under the CSS/Newman Settlement Agreements.

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