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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

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FILE: [REDACTED]
MSC-06-054-11907

Office: LOS ANGELES

Date:

JUL 15 2009

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:

SELF-REPRESENTED

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.

John F. Grissom
Acting 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, or *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 of the Los Angeles office and 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 (LULAC) Class Membership Worksheet. The director denied the application, finding that the applicant was ineligible for adjustment to temporary resident status because 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 time period.

On appeal, the applicant asserts that the evidence which she previously submitted establishes by a preponderance of the evidence that she continuously resided in the United States in an unlawful status for the duration of the requisite time period. The applicant submitted additional evidence on appeal.

The AAO has considered the applicant's assertions, reviewed all of the evidence, and has made a *de novo* decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.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 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).

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) 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.

¹ The AAO maintains plenary power to review each appeal 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 AAO's *de novo* authority has long been recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n.9 (2d Cir. 1989).

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).

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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's 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).

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. See 8 C.F.R. § 245a.2(d)(6). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

Even if the director has some doubt as to the truth, if the 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 (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. 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. *Matter of Ho*, 19 I & N Dec. 582, 591-592 (BIA).

The issue in this proceeding is whether the applicant (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the requisite

period of time. 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 several witness statements, a medical test report, the birth certificate of one the applicant's children, and several tax returns. The AAO has reviewed each document in its entirety to determine the applicant's eligibility; however, the AAO will not quote each witness statement in this decision. Some of the evidence submitted indicates that the applicant resided in the United States after May 4, 1988; however, because evidence of residence after May 4, 1988 is not probative of residence during the requisite time period, it shall not be discussed.

The record contains an affidavit from [REDACTED] who states that she has known the applicant since March 1981 when she met the applicant while working with the applicant's mother.

The applicant has submitted two affidavits of [REDACTED] who states that the applicant was her neighbor from some time in 1981 for the duration of the requisite statutory period when the applicant resided in Pomona, California. The affiant does not state any address at which the applicant resided in Pomona, California.²

The record contains the affidavit of [REDACTED] who states that he has known the applicant since she first arrived in the United States, although he does not state when the applicant first arrived in the United States. The affiant says that he was the applicant's neighbor when the applicant lived at [REDACTED] in Pomona, California from February 1981 to October 1981. The affiant also states that the applicant then moved to [REDACTED] in Pomona, California, living there from October 1981 until approximately December 1985.

The applicant submitted the affidavit of her sister, [REDACTED] who states that the applicant lived with her at [REDACTED] in Pomona, California from early 1981 for the duration of the requisite statutory period. However, this statement is inconsistent with the statement of affiant [REDACTED] that the applicant lived at [REDACTED] in Pomona, California from February 1981 to October 1981. This inconsistency calls into question the affiant's knowledge of the applicant's continuous residence in the United States during the requisite period. Due to this inconsistency this document has minimal probative value.

The record contains two employment verification letters from [REDACTED] the owner of Marisco's "La Paz" Restaurant, who states that the applicant worked for her as a kitchen helper

² Affiant [REDACTED] states that the applicant resided in Pomona, California until 1994. However, the applicant's I-687 application states that the applicant resided in Pomona, California until March, 1995. While outside of the requisite time period, the inconsistency calls into question the affiant's knowledge of the applicant's continuous residence in the United States during the requisite period.

and cashier from December 1981 for the duration of the requisite statutory period. The affiant states that the applicant worked full time and was never laid off.³

Although the witnesses claim to have personal knowledge of the applicant's residence in the United States during the requisite period, none of the witness statements provides 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. For instance, the witnesses do not state how they date their initial meeting with the applicant, how frequently they had contact with the applicant, and how they had personal knowledge of the applicant's presence in the United States during the requisite period. Upon review, the AAO finds that, individually and together, the witness statements do not indicate that their assertions are probably true. In addition, the many discrepancies among the witnesses' statements detract from the credibility of the applicant's claim. 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. *Matter of Ho*, 19 I & N Dec. 582, 591-592 (BIA). Therefore, they have minimal probative value.

Furthermore, the employment verification letters of [REDACTED] fail to conform to the regulatory standards for letters from employers. The regulation at 8 C.F.R. § 245a.2(d)(3)(i) provides that letters from employers must include: (A) Alien's address at the time of employment; (B) Exact period of employment; (C) Periods of layoff; (D) Duties with the company; (E) Whether or not the information was taken from official company records; and (F) Where records are located and whether the Service may have access to the records. If the records are unavailable, an affidavit-form letter stating that the alien's employment records are unavailable and why such records are unavailable may be accepted in lieu of subsections (E) and (F). The employment verification letters fail to declare whether the information was taken from company records, to identify the location of such company records, and to state whether such records are accessible, or in the alternative state the reason why such records are unavailable. Further, the letters do not state how the witness was able to date the applicant's employment. It is unclear whether the witness referred to her own recollection or any records she or the company may have maintained. Lacking relevant information, the letters regarding the applicant's employment fail to provide sufficient detail to verify the applicant's claim of continuous residence in the United States for the duration of the requisite statutory period. Therefore, these documents have minimal probative value.

Additional evidence in record is comprised of a medical test report, the birth certificate of one the applicant's children, several tax returns and a letter from a doctor. The applicant submitted a

³ Affiant [REDACTED] states that the applicant worked for her restaurant from December 1981 until the end of 1993, when the applicant left her employment to move to San Diego. This testimony is inconsistent with the information provided by the applicant in the I-687 application, wherein she does not list any addresses in San Diego, California, and states that she moved from Pomona, California to Chula Vista, California in 1995. While outside of the requisite time period, these inconsistencies call into question the affiant's knowledge of the applicant's continuous residence in the United States during the requisite period.

copy of a report of a tuberculosis skin test performed on her with a date of July 31, 1981. This document would provide some detail regarding the applicant's residence in the United States in 1981. However, the month and year of the report's date appear to have been altered. The altered date is material to the applicant's claim, in that it has a direct bearing on the applicant's residence during the requisite period. Therefore, this document has minimal probative value. Furthermore, 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. *Matter of Ho*, 19 I & N Dec. 582, 591-592 (BIA). This alteration undermines 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.

The record contains a copy of the birth certificate of one of the applicant's children born in the United States on September 29, 1987. Although this birth certificate is evidence in support of the applicant's residence in the United States on September 29, 1987 it does not establish the applicant's continuous residence throughout the requisite time period.

The applicant also submitted copies of federal income tax returns for the tax years 1982, 1983 and 1984. These documents would provide some detail regarding the applicant's residence in the United States in 1982, 1983 and 1984. However, it appears that information on these tax returns has been altered with whiteout. Due to the poor quality of the copies of these documents, it is difficult to determine the extent of the alterations. For this reason, in judging the probative value and credibility of the evidence submitted, greater weight will be given to the submission of original documentation. 8 C.F.R. § 245a.2(d)(6).

In addition, these tax returns contain information which is inconsistent with information contained in the record. The applicant stated at the time of her interview that she has seven children, all born in the United States, with only one child having been born during the requisite statutory period. The applicant submitted birth certificates for her seven children, including the one child, [REDACTED], born during the statutory period. However, these tax returns list only one dependent child, named [REDACTED]. On appeal, the applicant has submitted an affidavit wherein she asserts that among her seven children are a daughter named [REDACTED] and a son named [REDACTED] both born in the United States in 1981 and 1983 respectively. Neither a child named [REDACTED] nor a child named [REDACTED] is identified in the birth certificates of record.⁴ Finally, these tax returns each contain a Schedule C, wherein the applicant states that she is the owner of Marisco's La Paz. This information is inconsistent with the information contained in the applicant's I-687 application and the statements of [REDACTED], stating that the applicant was an employee of Marisco's La Paz Restaurant. No evidence of record resolves the many inconsistencies contained in these tax returns. It is incumbent upon the applicant to resolve any inconsistencies in the record by

⁴ In addition, tax returns for tax years after the requisite statutory period only list dependent children named [REDACTED] and [REDACTED]. The applicant has not provided any information regarding a son named [REDACTED]. While outside of the requisite time period, these inconsistencies further call into question the applicant's claim of continuous residence in the United States during the requisite period.

independent objective evidence pointing to where the truth lies. As stated above, 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. *Matter of Ho*, 19 I & N Dec. 582, 591-592 (BIA). 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 these documents have minimal probative value

The record also contains a letter from [REDACTED] of Michael Women's Medical Clinic, Inc. in Pomona, California stating that the applicant was his patient since some time in 1986 for the remainder of the requisite statutory period, at which time the applicant resided at [REDACTED] in Pomona, California. Although the affiant's statement is evidence in support of the applicant's residence in the United States from some time in 1986 through the remainder of the requisite statutory period, it does not establish the applicant's continuous residence throughout the requisite statutory period.

The remaining evidence in the record is comprised of copies of the applicant's statements and the instant Form I-687. As stated previously, to meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony, and the sufficiency of all the evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6). Here, the applicant has failed to provide probative and credible evidence of her continuous residence in the United States for the duration of the requisite period. The applicant's evidence lacks sufficient detail, and there are material inconsistencies in the record.

Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that she is eligible for the benefit sought. The various statements and affidavits currently in the record which attempt to substantiate the applicant's residence and employment 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 throughout the statutory period, and thus are not probative.

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.

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