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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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FILE:

MSC-06-090-13005

Office: CHICAGO

Date:

JUN 16 2009

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:

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, 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, Chicago, and is now before the Administrative Appeals Office 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 denied the application after determining 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 noted the inconsistencies in the applicant's statements regarding her employment history in the United States and the insufficiency of the affidavits submitted. 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, the applicant asserts that she did not testify during her interview that she had not worked in the United States. She further asserts that her parents did not keep records concerning their places of residence because they did not think that they would need such documents. The applicant asserts that she did not go to school but stayed at home and was taught to read and write by her older siblings. The applicant does not submit any evidence on appeal.

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. See 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).

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 her burden of establishing continuous unlawful residence in the United States since before January 1, 1982, and throughout the requisite period. Here, the applicant has failed to meet this burden.

The applicant stated in her letter dated February 27, 2006 that she came to the United States in 1981. She also stated “my parents traveled constantly to Mexico and I grew and attended school in both countries.” In contrast, the applicant states on appeal that she did not attend school and that she stayed at home, and was taught by her older siblings. She further states on appeal that her parents thought it best that she stay home and cook and clean. It is noted that the applicant indicated on her Form I-687 application at part #33 that she was unemployed and was supported by her family from December of 1981 to January of 1997. The applicant lists on her Form I-687 application at part #32 one absence in July of 1985 and one in December of 1987.

The applicant submits as evidence a copy of her High School Diploma from Rockford East High School dated June 1999, and a copy of her Associate in Arts Degree from Rock Valley College

dated December 16, 2005. The applicant's statements are inconsistent and contradictory. She fails to submit documentary evidence to show how, when and where she obtained the education that is needed as a prerequisite to entering high school. It is also noted that the applicant's father stated in his sworn affidavit "I came to the U.S. with my family in 1980." Whereas, the applicant testified that she entered the United States in December of 1981. Here, the inconsistencies and contradictions cast doubt on the applicant's proof. 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 lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

The applicant submitted the following attestations as evidence:

- A declaration from [REDACTED] who stated that she was born in Eagle Pass, Texas and has known the applicant since she lived there. She further stated that she met the applicant at a party, and that she was very young at the time. She also stated that she has kept in touch with the applicant over the years. It is noted that the declarant's date of birth as it appears on her birth certificate is June 15, 1985.
- An affidavit from [REDACTED] who stated that he has known the applicant's family since 1981 when her family lived in Dallas, Texas. He also stated that they have visited with each other over the years.
- An affidavit from [REDACTED] who stated that she has known the applicant since 1981 when her family lived at [REDACTED] in Dallas, Texas, and that they have visited with each other over the years.
- An affidavit from [REDACTED] who stated that he is the applicant's father and that he and his family came to the United States in 1980. He also stated that his family lived at [REDACTED] in Dallas, Texas until 1984 and that the applicant would help her mother around the house.

The affidavits submitted are inconsistent with statements made by the applicant, are lacking in detail, and are neither collectively nor individually sufficient to prove the assertions made. They fail to establish the applicant's continuous unlawful residence in the United States for the duration of the requisite period. Affiant [REDACTED] fails to specify the date she met the applicant. The applicant's father's statement is inconsistent with her testimony under oath where she stated she entered the United States in December of 1981. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality; 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.

None of the declarants' statements 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 during the time periods addressed in the affidavits. The affidavits are insufficient evidence to support the affiants' accounts of the applicant's presence in the United States. To be considered probative and credible, affidavits must do more than simply state that an affiant 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 the relationship probably did exist and that the affiant does, by virtue of that relationship, have knowledge of the facts alleged. Upon review, the AAO finds that, individually and collectively, the declarants' statements do not indicate that their assertions are probably true. Therefore, they have little probative value.

The applicant has failed to provide sufficient credible and probative evidence to establish her continuous unlawful residence in the United States since prior to January 1, 1982, and during the requisite period. **She has failed to overcome the director's basis for denial.** Although the applicant's claims to have entered the United States when she was one month old, she has failed to provide copies of official school records and transcripts or official medical or immunization records as requested.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period and the inconsistencies noted above 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 inconsistencies and contradictions in the applicant's statements and her reliance on attestations that are lacking in detail and 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.