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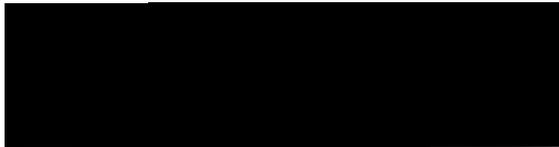
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529 - 2090



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FILE: [REDACTED]  
MSC-05-195-17774

Office: NEW YORK

Date:

JUN 22 2009

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:



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 New York 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 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.<sup>1</sup>

In addition, the director determined that the applicant failed to establish that she is eligible for class membership pursuant to the terms of the CSS/Newman settlement agreements. Although the applicant asserted in her Form I-687 Supplement that she was discouraged from filing an application during the eligibility period of the legalization program due to travel outside of the United States, the applicant also stated in her application that her only travel outside of the United States took place after the eligibility period.<sup>2</sup> Nonetheless, by adjudicating the Form I-687 on the merits, the director treated the applicant as a class member. Therefore, the AAO will adjudicate the appeal of the denied application.

On appeal, counsel for the applicant asserts that the applicant has established her unlawful residence for the requisite time period. The applicant has not submitted any new 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.<sup>3</sup>

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).

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<sup>1</sup> The director stated that the application was being denied for the reasons set forth in the Notice of Intent to Deny, which stated that the applicant had not established by a preponderance of the evidence that she had resided in the United States for the requisite statutory period.

<sup>2</sup> In the I-687 application, the applicant listed her only absence from the United States as being from October 1988 until August 2003.

<sup>3</sup> 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 (9<sup>th</sup> 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).

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.

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 four affidavits. 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 applicant has submitted the affidavit of [REDACTED] who states that he met the applicant in New York in May 1981 and visited the applicant at her residence several times. [REDACTED] also states that some time in April 1988 he accompanied the applicant to an office of the former Immigration and Naturalization Service (INS) for the applicant to apply for legalization, but the applicant was turned away. However, the testimony of [REDACTED] is inconsistent with that of the applicant. The applicant asserts in the I-687 supplement that she was front-desked due to travel outside the United States, and asserts in the I-687 application that her only absence from the United States was for the period from October 1988 until August 2003. Therefore, the applicant could not have been front-desked in April 1988 due to travel outside the United States. Due to this inconsistency the affidavit of [REDACTED] has minimal probative value.

The record contains the affidavit of [REDACTED] who states that she met the applicant on a trip to New York from Texas in 1987 when the applicant braided the affiant's hair. The affiant states that each time she would visit New York she would have the applicant braid her hair.

The applicant submitted the affidavit of [REDACTED] who states that he met the applicant in December 1981 and in 1985 when the applicant visited San Francisco, and that he has communicated with the applicant over the phone from time to time.

The record contains the affidavit of [REDACTED] who states that the applicant called him to inform him of her arrival in the United States in March 1981, and visited him in San Francisco for one week in December 1981. The affiant states that he saw the applicant again at a cultural gathering in New York in 1983. [REDACTED] states that the applicant again visited him in San Francisco for three weeks in 1985, at which time the affiant states that he witnessed her application for the legalization program of that period. The affiant states that the application was rejected and the applicant thereafter returned to Nigeria in October 1988. However, the testimony of [REDACTED] is inconsistent with that of the applicant. The applicant asserts in the I-687 supplement that she was front-desked due to travel outside the United States, and asserts in the I-687 application that her only absence from the United States was for the period from October 1988 until August 2003. Therefore, the applicant could not have been front-desked during the period of time between 1985 and October 1988 due to travel outside the United States. Due to this inconsistency the affidavit of [REDACTED] has minimal probative value.

In addition, 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 him, 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. Lacking relevant information, the affidavits fail to provide sufficient detail to verify the applicant's claim of continuous residence in the United States during the requisite statutory period. Upon review, the AAO finds that, individually and together, the witness statements do not indicate that their assertions are probably true.

The remaining evidence in the record consists of the instant I-687 application. 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.