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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: SAN FRANCISCO Date: NOV 02 2009

MSC 06 045 12127

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: Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter 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.

Perry Rhew
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, San Francisco, California, 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 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, the applicant provides a copy of her passport and asserts that it is evidence to prove "my legal status from June 1981 to January 1982 had expired and I was then under an unlawful 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 presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the alien attempted to file a completed Form I-687 application and fee or was caused not to timely file, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. Paragraph 11, page 6 of the CSS Settlement Agreement and paragraph 11, page 10 of the Newman Settlement Agreement.

An alien applying for adjustment of status 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. *See* 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 including affidavits 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.* 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 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.

In an attempt to establish continuous unlawful residence in the United States since prior to January 1, 1982, the applicant submitted:

- A statement dated May 30, 2007, from [redacted] who indicated that she met the applicant in 1987 in San Francisco at [redacted] and has remained friends with the applicant since that time.
- A statement from who indicated that she met the applicant in 1983 at a family dinner. The affiant indicted that she was a neighbor of the applicant in Greenbrae, California.
- Several photographs.
- A copy of her Brazilian passport which reveals that on December 18, 1980, the applicant was issued a B-2 multiple entry non-immigrant visa valid through December 19, 1984. The record reflects that the applicant lawfully entered the United States on January 15, 1981.
- An affidavit from [redacted], written in the Portuguese language with English translation, who indicated the applicant participated in a cultural exchange program between the United States and Brazil in January 1981. The affiant indicated that she was a teacher of Portuguese and English languages in Brazil.

- A statement from [redacted] who indicated that the applicant was his tenant from June 1986 to September 1987 at [redacted] The affiant indicated that he sold the building in 2003.
- A statement from [redacted] and [redacted] who indicated that in the spring of 1988, the applicant visited for a couple of weeks at their residence in Rockville, Maryland. The affiants indicated after the visit the applicant went to New York and flew back to Brazil.
- A statement from the applicant's parents, [redacted] and [redacted] written in the Portuguese language with English translation, who indicated they accompanied the applicant to the United States in January 1981 to participate in a cultural exchange program. The parents indicated that the applicant received their financial support "during all the time she would remain in North America."

On June 30 2007, the director issued a Notice of Intent to Deny, which advised the applicant that she failed to establish she was in an unlawful status prior to January 1, 1982 and failed to establish her continuous residence in the United States during the requisite period.

The applicant, in response, asserted that she arrived in the United States in 1981 on a cultural exchange program. The applicant asserted that her parents brought her to Greenbrae, California where she resided with [redacted]. The applicant asserted that she convinced her parents to allow her to remain in the United States once her visa had expired and resided with [redacted] for a few more months. The applicant asserted that she attended English as a Second Language (ESL) classes, but is unable to provide evidence as the school has been closed and the College of Marin in Kentfield, California has no record of ESL students. The applicant, asserted, in pertinent part:

> Due to the fact that, I'd always been living with roommates, I'd never had a rental agreement under my name. Therefor, I'd tried to contact some ex roommates in order to verify if they still have any bills dated from the time we lived together but, none of them were able to find such old bills.

The applicant asserted that all her belongings were lost in the Brazilian Air Force mail when she was sending them from Washington D.C. to her hometown, Rio de Janeiro, in May 1988. The applicant asserted that she was enclosing photographs dated in 1981 at Disneyworld and when her family brought her to the United States. However, no photographs were submitted with her response to the Notice of Intent to Deny.

The director, in denying the application, noted that the applicant failed to provide evidence that her authorized stay as a culture exchange student expired before January 1, 1982. The director determined that the applicant had failed to submit credible evidence establishing that she resided in the United States in an *unlawful status* continuously from before January 1, 1982 through May 1988.

It is noted that the director also denied the application because she was absent from the United from May 1988 to April 1999.

The regulation at 8 C.F.R. § 245a.1(c)(1)(i) indicates that a single absence from the United States cannot exceed 45 days between January 1, 1982 through the date the application for temporary resident status is filed. As the filing period ending on May 4, 1988, the applicant would have been absent for only four days. The applicant's absence subsequent to May 4, 1988 is not relevant to establishing eligibility for temporary residence under the CSS/Newman Settlement Agreements. As such, the director's finding will be withdrawn.

On appeal, the applicant asserts that the statement from [redacted] did not state that "I was in the United States on a student visa. The Culture Exchange Program just found me a family to stay with to improve my English while I was visiting the United States as a tourist."

The statements issued by the applicant have been considered. However, the AAO does not view the documents discussed above as substantive enough to support a finding that the applicant continuously resided in an unlawful status from before January 1, 1982 through the date she attempted to file her application, as she has presented contradictory and inconsistent documents, which undermines her credibility.

The applicant asserts that she resided in Greenbrae, California with [redacted] during a portion of 1981. The applicant, however, claimed on her Form I-687 application to have resided in Miami, Florida during 1981. Likewise, the applicant asserts that she attempted to obtain evidence from her roommates, but none of the roommates were able to locate any old bills, and that the College of [redacted] did not maintain records of ESL students.. The applicant, however, provided no statements from [redacted] the College of [redacted] or her alleged roommates to support her assertions. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. Matter of Soffici, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The photographs submitted at the time the application was filed have no identifying evidence which would serve to either prove or imply that the photographs were taken during the requisite period.

Fred Consulter, in his affidavit, indicated that the applicant was his tenant from June 1986 to September 1987 at [redacted]. The applicant, however, did not claim to have resided at this address during the requisite period on her Form I-687 application. [redacted], in her affidavit, indicated she was a neighbor of the applicant in Greenbrae California in 1983. The applicant, however, did not claim any residence in the state of California on her Form I-687 application until April 1985. As such the affidavits from Fred and [redacted] and [redacted] raise serious questions to their authenticity.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an 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).

Given the inconsistencies in the applicant's testimony coupled with the credibility issues arising from the documentation provided, it is determined that the applicant has not met her burden of proof. The applicant has not established, by a preponderance of the evidence, that after her visa had expired she remained in the United States in an unlawful status continuously through the date she attempted to file her application. 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.