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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 06 095 12580

Office: LOS ANGELES

Date:

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:

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.

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, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined that the applicant had not established that she was eligible for class membership pursuant to the CSS/Newman Settlement Agreements. The director further determined that the applicant had not demonstrated that she had continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that she attempted to file a Form I-687, Application for Status as a Temporary Resident, with the Immigration and Naturalization Service or the Service (now United States Citizenship and Immigration Services or USCIS) in the original legalization application period between May 5, 1987 to May 4, 1988. Therefore, the director concluded that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and section 245A of the Immigration and Nationality Act (Act) and denied the application.

On appeal, counsel reiterates the applicant's claim of residence in this country for the required period and asserts that the applicant submitted sufficient evidence to support such claim. Counsel contends that USCIS failed to issue a notice of intent to deny to the applicant prior to the denial of her application and then failed to forward his denied Form I-687 application. Counsel includes new affidavits in support of the applicant's claim of residence for the period in question.

Although the director determined that the applicant had not established that she was eligible for class membership pursuant to the CSS/Newman Settlement Agreements, the director treated the applicant as a class member in adjudicating the Form I-687 application on the basis of whether the applicant had established continuous residence in the United States for the requisite period. Consequently, the applicant has neither been prejudiced by nor suffered harm as a result of the director's finding that the applicant had not established that she was eligible for class membership. The adjudication of the applicant's appeal as it relates to her claim of continuous residence in the United States since prior to January 1, 1982 shall continue.

An alien applying for adjustment to temporary resident status must establish that he or she entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through the date the application is filed. Section 245A(a)(2)(A) of the Act, 8 U.S.C. § 1255a(a)(2)(A), and 8 C.F.R. § 245a.2(b).

An alien applying for adjustment to temporary resident status must 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 and 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. *See* 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. 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 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 (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 during the requisite period. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the Act, and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to USCIS on January 3, 2006. At part #32 of the Form I-687 application where applicants were asked to list all absences from the United States back through January 1, 1982, the applicant listed two absences during the requisite period when she traveled to Mexico to visit her sick father in February 1986 and to give birth to her son in November 1986.

A review of the record reveals that the applicant previously made a claim to class membership in a legalization class-action lawsuit and as such, was permitted to file a separate Form I-687 application of the Act, on November 20, 1989. At part #35 of this Form I-687 application (the difference in the numbering of parts on the two separate Form I-687 applications is explained by the fact that the application format was revised as of on April 30, 2004 and again on October 26, 2005) where applicants were asked to list all absences from the United States back through January 1, 1982, the applicant listed two absences from this country during the requisite period when she traveled to Mexico for "visits" of an unspecified number of days from April 1984 to May 1984 and from April 1986 to May 1986. This testimony directly contradicted the applicant's subsequent testimony on the Form I-687 application submitted on January 3, 2006 that her only two absences during the requisite period occurred when she traveled to Mexico to visit her sick father in February 1986 and to give birth to her son in November 1986. This contradiction raises questions as to the applicant's overall credibility as well as the credibility of her claim of residence for the period in question.

The record shows that the applicant was interviewed on March 3, 1997 regarding the Form I-687 application submitted on November 20, 1989. The notes of the interviewing officer reflect that the applicant testified under oath that she departed the United States in 1984 to travel to Mexico and stayed there until she reentered this country without a visa or passport in 1986. The record contains a signed sworn statement dated March 3, 1997, written by the applicant in her own hand and in her native language of Spanish that states in pertinent part:

Entre a estados unidos en mil 1979 sin visa Sali en 1984 regrese a estados unidos
1986 sin visa Sali otra 11-88 Mexico regrese Enero 89 sin visa estube en Mexico
2 anos y por eso no qalific[sic] por la amnestia

The English translation of the applicant's signed sworn statement is:

I entered the United States in one thousand 1979 without visa. I went out in 1984 I
returned to the United States in 1986 without visa. I went out again in November
1988 to Mexico I returned in January 1989 without visa. I was in Mexico for two
years and therefore did not qualify for the amnesty.

The applicant's testimony at her interview on March 3, 1997 and within her own sworn statement directly contradicted her testimony on both of the Form I-687 applications contained in the record

regarding the number and length of her absences from this country in the requisite period. Moreover, the applicant's admission that she was in Mexico for two years from 1984 to 1986 negates her claim that she continuously resided in the United States from prior to January 1, 1982 through May 4, 1988 as required by section 245A(a)(2)(A) of the Act and 8 C.F.R. § 245a.2(b).

The record shows that the applicant subsequently submitted a Form I-485 LIFE Act application on October 8, 2001. With her Form I-485 LIFE Act Application, the applicant included a Form G-325A, Report of Biographic Information. At that part of the Form G-325A biographic report where applicants were asked to list information relating to their spouse, the applicant acknowledged that she had been married in Mexico on February 15, 1986. The fact that the applicant was married in Mexico on February 15, 1986 only serves to raise more questions relating to the number and length of her absences from this country in the requisite period as well as her claim that she continuously resided in the United States from prior to January 1, 1982 through May 4, 1988.

In support of her claim of continuous residence in this country since prior to January 1, 1982, the applicant submitted the following: employment letters; bank documents; an achievement award; hospital receipts; tax documents; medical receipts; identification cards; retail receipts; earnings statements; affidavits of residence; declarations of residence; a State of California Department of Motor Vehicles Driver License and Extension of License; a State of California Department of Health Services Nurse Assistant Certificate; an airline ticket; letters of membership; a letter from a doctor; and, a Social Security Administration Earnings Statement.

It must be noted that the Social Security Administration Earnings Statement reflected that the applicant had earnings subject to withholding taxes beginning in 1977 through 1984, no earnings in 1985, 1986, 1987, and 1988, and a resumption of earnings in 1989. The fact that the applicant had no earnings from 1985 through 1988 despite having earnings both prior and subsequent to these dates tends to demonstrate that she was not residing in the United States from 1985 through 1988.

The director determined that the applicant failed to submit sufficient evidence demonstrating her residence in the United States in an unlawful status for the requisite period. Therefore, the director concluded that the applicant was ineligible to adjust to temporary residence and denied the Form I-687 application on September 30, 2006.

Counsel's remarks on appeal regarding the sufficiency of evidence the applicant submitted to demonstrate her residence in this country during the period in question have been considered. However, the applicant she specifically and unequivocally admitted that she was in Mexico for two years and therefore did not qualify for the amnesty ("estube en Mexico 2 anos y por eso no qalific[sic] por la amnestia") in a sworn statement dated March 3, 1997. The applicant has also acknowledged that she was married in Mexico on February 15, 1986 and gave birth to two sons in Mexico on November 15, 1986 and November 8, 1988, respectively. The applicant submitted a Social Security Earnings Statement establishing that she had no earnings from 1985 through

1988 despite having consistent yearly earnings both prior and subsequent to these dates. The applicant's own conflicting testimony relating to critical elements of her claim of residence since prior to January 1, 1982 diminishes her overall credibility as well as the credibility of her claim of continuous unlawful residence in this country for the entire requisite period.

The applicant's conflicting testimony seriously undermines the credibility of her claim of residence in this country for the requisite period, as well as the credibility of the documents submitted in support of such claim. Pursuant to 8 C.F.R. § 245a.2(d)(3), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. The applicant has failed to submit sufficient credible documentation to meet her burden of proof in establishing that she has resided in the United States since prior to January 1, 1982 by a preponderance of the evidence as required under both 8 C.F.R. § 245a.2(d)(3) and *Matter of E- M-*, 20 I&N Dec. 77 (Comm. 1989).

Given the applicant's reliance upon documents with minimal or no probative value and her own contradictory testimony, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through May 4, 1988 as required under section 245A the Act. 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.