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

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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: CHICAGO Date: OCT 19 2009

MSC 06 097 11096

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:

[redacted]

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, Chicago, Illinois, 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, counsel asserts that the director disregarded the clear and concise language of section 245A of the Act and the settlement agreements. Counsel asserts that the director did not take into account the passage of time and the applicant's difficulties in obtaining such evidence.

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.

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 been long recognized by the federal courts. See, e.g. Dor v. INS, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The record reflects that the applicant filed a Form I-485, Application for Permanent Resident Status, under the Legal Immigration Family Equity (LIFE) Act on June 18, 2002.[1] In an attempt to establish continuous unlawful residence since before January 1, 1982, through May 4, 1988, the applicant provided the following evidence:

- A Trailways bus ticket issued on August 16, 1981.
- Receipts dated January 26, 1983, August 22, 1983 and July 18, 1984.
- A 1988 wage and tax statement from Dunkin Donuts.
- A social security statement dated December 26, 2002, reflecting the applicant's earnings since 1987.

[1] The Form I-485 application was denied by the director on February 25, 2005.

- Affidavits from [redacted], who indicated that he has known the applicant since 1981. The affiant indicated that the applicant is a family friend and used to attend the same church
- An affidavit from [redacted], who attested to the applicant's residence at [redacted] since 1984.

  An affidavit from [redacted] who indicated that he has known the applicant "for awhile." The affiant attested to the applicant's moral character.

  An affidavit from [redacted] who attested to the applicant's residence at [redacted] since 1982.
- A photocopied letter dated March 17, 1983 from an entity in Karachi, Pakistan addressed to the applicant at [redacted]
- An affidavit notarized July 7, 2003, from [redacted], who indicated that [s]he has known the applicant for the past 25 years and "has stayed on and off with me during the 25 years." The affiant attested to the applicant's moral character.

Along with her current Form I-687 application, the applicant, in an attempt to establish continuous unlawful residence in the United States since prior to January 1, 1982, submitted copies of the previously submitted affidavits from [redacted] and [redacted] as well as the letter dated March 17, 1983, from an entity in Karachi, Pakistan. The applicant also submitted:

An identification card issued on July 13, 1987 from the state of Illinois.

A photocopied letter dated January 12, 1982, from an entity in Karachi, Pakistan.

- A photocopied letter dated February 4, 1985 from Blue Cross Blue Shield
- A photocopied letter dated July 25, 1984 from the Miami (Florida) Children's Hospital, regarding an admission date of April 5, 1984.
- A photocopied letter dated February 16, 1982 from American Express.

  A photocopied letter dated September 18, 1985 from Florida Power and Light, indicating the applicant has been a customer of record since October 1, 1982.
- A photocopied letter dated December 15, 1983 from American Bankers Insurance Group.

Each letter noted above was addressed to the applicant at [redacted]

The director determined that the above documents did not establish the applicant's presence in the United States prior to January 1, 1982. The director concluded that the applicant had failed to submit sufficient credible evidence establishing her continuous residence in the United States since prior to January 1, 1982, and, therefore, denied the application on September 20, 2007.

The statements issued by counsel have been considered. However, the documents discussed above do not support a finding that the applicant entered the United States prior to January 1, 1982, and resided since that date through the date she attempted to file her application, as she has presented contradictory and inconsistent documents, which undermines her credibility.

The receipts and the Trailways ticket have no probative value as the applicant's name was not listed.

The probative value of the letters is limited in that they are photocopies rather than originals. "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).

The authenticity of the letter from Miami Children's Hospital raises questions as it indicates that the applicant was the patient; however, the applicant was 30 years of age at the time of her alleged admission. Likewise, the letter from Florida Power and Light raises questions to its authenticity as [redacted] and [redacted] indicated that the applicant was residing in Des Plaines, Illinois in 1982 and 1984, respectively.

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).

An application should not be denied solely because the applicant has only submitted affidavits to establish continuous residence in the United States for the duration of the requisite period. However, the submission of affidavits alone will not always be sufficient to support the applicant's claim. 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). Casting doubt to the applicant's claim that she resided in the United States continuously during the entire requisite period is the fact that the affidavits from and [redacted] contradict the applicant's claim to have been residing in Miami, Florida from 1981 to 1986. [redacted], in his affidavit, attested to the applicant's moral character, but made no attestation to the applicant's residence in the United States during the requisite period.

In addition, [redacted], indicated that the applicant "has stayed on and off with me during the 25 years," but failed to provide the place of residence. [redacted] in his affidavits, also failed to state the applicant's place of residence during the requisite period. Neither affiant provides the detailed accounts of an ongoing association establishing a relationship under which the affiants could be reasonably expected to have personal knowledge of the applicant's residence, activities and whereabouts during the requisite period.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of her 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 credibility issues arising from the documentation provided by the applicant, it is determined that the applicant has not met her burden of proof.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he has 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.