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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

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: DALLAS Date: SEP 09 2009

MSC-06-082-15240

IN RE: Applicant: [redacted]

APPLICATION: Application for Temporary Resident Status under 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. 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 Dallas 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 was ineligible for adjustment to temporary resident status because 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.

On appeal, counsel for the applicant asserts that the evidence which the applicant previously submitted establishes by a preponderance of the evidence that she continuously resided in the United States in an unlawful status for the duration of the requisite time period.

The AAO has considered the counsel'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.[1]

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. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

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

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 has established that she (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 several witness statements and several documents. 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 record contains a fill-in-the-blank affidavit from [redacted], the applicant's uncle, who states that the applicant lived with him from January 1981 until December 1983 at [redacted] in Dallas. However, this information is inconsistent with the information provided by the applicant in the instant I-687 application, in which the applicant does not list this address as a residence address in the United States.[2]

The applicant has submitted an affidavit from [redacted], who states that he has personal knowledge that the applicant lived with her uncle from 1981 to 1983. However, the affiant does not state the basis for his knowledge of this information.

The record contains the affidavit of who states that he has known the applicant since 1982.[3]

The applicant has also submitted two employment verification letters from who states that she has known the applicant since July 1981. The affiant states that the applicant worked for her as a live-in housekeeper and babysitter from July 1981 for the duration of the requisite statutory period. The regulation at 8 C.F.R. § 245a.2(d)(3)(i) provides that letters from employers must include: (A) Alien's address at the time of employment; (B) Exact period of employment; (C) Periods of layoff; (D) Duties with the company; (E) Whether or not the information was taken from official company records; and (F) Where records are located and whether the Service may have access to the records. If the records are unavailable, an affidavit-form letter stating that the alien's employment records are unavailable and why such records are unavailable may be accepted in lieu of subsections (E) and (F). The affiant's statements of employment fail to comply with the above cited regulation because they lack considerable detail regarding the applicant's employment. For instance, the affiant does not state the applicant's daily duties as a babysitter and housekeeper, the number of hours or days she was employed, or the location at which she was employed. Furthermore, the affiant does not state how she was able to date the applicant's employment. It is unclear whether she referred to her own recollection or any records she may have maintained. Finally, the statement of the affiant is inconsistent with the statement of the applicant in the instant I-687 application that she was employed as a student at the

[2] The applicant does list this address in the initial I-687 application filed in 1990 to establish the applicant's CSS class membership.

[3] The affidavits of [redacted] and [redacted] were attested to on the same date before the same

Omega Institute in Cinnaminson, New Jersey from May 1984 to 1986. For these reasons, the affiant's statement regarding the applicant's employment is of little 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, the witness statements do not 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 in the United States during the requisite period. To be considered probative and credible, witness 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 it probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. For instance, the witnesses do not state how they date their initial meeting with the applicant or specify social gatherings, other special occasions or social events when they saw and communicated with the applicant during the requisite period. The affiants also do not state how frequently they had contact with the applicant during the requisite period. The affiants do not provide sufficient details that would lend credence to their claimed knowledge of the applicant's residence in the United States during the requisite period. For these reasons the AAO finds that the witness statements do not indicate that their assertions are probably true.

The record contains an envelope addressed to the applicant at [redacted] in Florence, New Jersey with a postmark of August 15, 1984. Although this envelope would provide some evidence regarding the applicant's presence in the United States on August 15, 1984 it would not establish the applicant's continuous residence for the duration of the requisite statutory period. However, this envelope is inconsistent with the information provided by the applicant in the instant I-687 application, in which the applicant does not list this address as a residence address in the United States. Due to this inconsistency this document has minimal probative value.[4]

The record contains copies of six letters written to the applicant from December 5, 1981 to May 29, 1986. However, since these letters do not contain evidence that they were mailed to the applicant at some address in the United States, they do not establish the applicant's continuous residence for the duration of the requisite period.

The applicant has submitted a copy of an auto repair order dated August 23, 1982 for repair of a 1989 Volvo. In addition to the fact that a model 1989 car could not possibly have been repaired in 1982, it appears that the date of this repair order has been altered. Furthermore, the address listed for the applicant on the repair order is listed in the instant I-687 application as the applicant's

[4] This address is consistent, however, with a Form I-213 Record of Deportable Alien dated January 13, 1985 in which the alien stated that in 1984 she lived in Florence and Willingboro, New Jersey.

address after the requisite statutory period.[5] Due to these inconsistencies this document has minimal probative value.

The record contains a statement from the Social Security Administration of the applicant's earnings from 1985 for the duration of the requisite statutory period. Although this earnings statement provides some evidence regarding the applicant's residence in the United States from 1985 for the duration of the requisite statutory period, it does not establish the applicant's continuous residence for the duration of the requisite statutory period.

The applicant has submitted a copy of her marriage certificate dated June 12, 1987. Although the marriage certificate provides some evidence regarding the applicant's residence in the United States on June 12, 1987, it does not establish the applicant's continuous residence for the duration of the requisite statutory period.

The remaining evidence in the record is comprised of copies of the applicant's statements, the instant I-687 application, the applicant's initial I-687 application filed in 1990 to establish the applicant's CSS class membership, and a Form I-213 Record of Deportable Alien.

The AAO finds in its *de novo* review that the record of proceedings contains many materially inconsistent statements from the applicant regarding her residences in and absences from the United States during the requisite statutory period.

The record reveals that the applicant's initial I-687 application listed residences in Dallas at [redacted] from January 1981 to December 1983, and at [redacted] from January 1984 for the duration of the requisite statutory period. Regarding her entry into and absence from the United States, in a separate class membership worksheet dated June 29, 1990 the applicant stated that she first entered the United States on January 11, 1981. The class member worksheet and the initial I-687 application list one absence from the United States from August 14, 1987 to September 10, 1987. The initial I-687 application lists the applicant's employment with [redacted] as a housekeeper from July 1981 for the duration of the requisite statutory period.

In the instant I-687 application the applicant lists residences during the requisite statutory period in Dallas at [redacted] in 1987, and at [redacted] from 1987 to 1988. The instant I-687 application lists part-time employment with [redacted] as a nanny from 1981 to 1984, and employment as a student at the Omega Institute in Cinnaminson, New Jersey from May 1984 to 1986.

Finally, the record contains a Form I-213 Record of Deportable Alien and an attached affidavit, both dated January 13, 1985, in which the alien stated that she last entered the United States on February 9, 1984, after which time she lived in Florence, New Jersey, then at [redacted] in Willingboro, New Jersey.

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[5] The applicant lists the address on the repair order, [redacted] as her address from 1990 to 1991 and from January 2002 to July 2003.

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 inconsistencies regarding the dates the applicant entered the United States, lived and worked at a particular location within the United States are material to the applicant's claim in that they have a direct bearing on the applicant's residence in the United States during the requisite period. No evidence of record resolves these inconsistencies. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence pointing to where the truth lies. 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 applicant has failed to provide probative and credible evidence of her continuous residence in the United States for the duration of the requisite period.

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 sufficiently probative to support the applicant's claim that she maintained continuous residence in the United States throughout the statutory period.

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.