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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

PUBLIC COPY

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[redacted]

FILE: [redacted] Office: ATLANTA Date: SEP 11 2009

MSC 05 273 14418

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.

for 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, 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, Atlanta, Georgia, 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 asserts that she has been residing in the United States since 1981 and states, in pertinent part:

> I didn't fail to provide evidence in support of my application. I have sent two letters (the first on October 10, 2006 and the 2nd one on October 24, 2006) to the Service explaining the reasons why I was taking long to provide documentation establishing my eligibility for Temporary Resident Status under section 245A.

The applicant submits affidavits from individuals attesting to her departure from the Ivory Coast and to her residence in the United States during the requisite period.

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 January 5, 2006, from [redacted] who indicated that she met the applicant in 1981 in Davis, California and that the applicant was residing with her [the applicant's] aunt at the time. The affiant indicated she became reacquainted with the applicant when the applicant moved to Atlanta. The applicant also submitted a statement dated December 23, 2005, from [redacted], who indicated that she met the applicant at a church gathering in Las Vegas, Nevada during the summer of 1987. The affiant indicated that they exchanged telephone numbers and years later she met the applicant in Georgia in March 1999.

On September 26, 2006, the director issued a Notice of Intent to Deny, which advised the applicant that the documentation submitted was insufficient to establish continuous residence in the United States since before January 1, 1982 through the date she attempted to file her application.

The applicant, in her initial response, requested an extension of 30 days in which to submit additional evidence in support of her application. In her subsequent response dated October 24, 2006, the applicant requested an additional 30 days in which to submit additional evidence.

The director determined 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 February 26, 2007.

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 documents discussed do not to 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 record contains a Form I-213, Record of Deportable Alien, which indicates that the applicant first arrived in the United States as a student in November 1988.[1]

The record reflects that the applicant filed a Form I-589, Application for Asylum and for Withholding of Deportation, on February 15, 1996. At Part C of the form, the applicant indicated that in 1985 she was arrested and jailed for one week by the police in her native country, Ivory Coast, she joined the Ivorian Popular Front in 1987, and in 1988 during a meeting with students on campus she was sent to prison for one week. At Part D of the form, the applicant indicated that she attended University de Cote d'Ivoire in Abidjan, Ivory Coast from October 1983 to July 1988.

The record also reflects that on December 19, 1996, a Form I-130, Petition for Alien Relative, was filed on behalf of the applicant by her former spouse.[2] Accompanying the Form I-130 is a Form I-485 application[3] and a Form G-325A, Biographic Information, signed by the applicant on October 15, 1996. The applicant indicated on her Form G-325A that she resided in her native country, Ivory Coast from October 1984 to November 1988.

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[1] The applicant's passport indicates she was issued a J-1 multiple visa in Abidjan, Ivory Coast on October 20, 1988.

[2] The Form I-130 was denied on February 28, 2001.

[3] The Form I-485 application based on the filing of the Form I-130 was denied on March 20, 2001.

The information contained within the Forms I-589 and G-325A establishes that the applicant utilized affidavits from affiants in a fraudulent manner in an attempt to support a claim of continuous residence in the United States during the requisite period.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Given the credibility issues arising from the documentation provided by the applicant, absence of competent objective evidence resolving the inconsistencies and contradictions in the record, it is determined that the applicant has not met her burden of proof. The applicant 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(a)(2) of the Act. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

Finally, the record reflects that on August 6, 1993, the applicant was arrested by the Lilburn Police Department in Georgia for theft by shoplifting. On January 21, 1994, the applicant was convicted of this offense under the First Offender Act and was ordered to pay a fine and placed on probation for three years. According to the provisions of the Probation of First Offenders Act, on February 7, 1996, the applicant was discharged without a court's adjudication of guilt. [redacted]

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.