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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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FILE: [redacted] Office: LOS ANGELES Date: SEP 2 8 2009

- consolidated herein]
MSC-06 033 12287

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

The applicant a native of Mexico who claims to have lived in the United States since February 1978, 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 on November 25, 1999. The director denied the application, finding 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.

On appeal counsel asserts that the applicant has submitted sufficient credible evidence to establish that she meets the continuous residence requirement for the duration of the requisite period. Counsel submitted additional documentation with the appeal.

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.

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.

The issue in this proceeding is whether the applicant (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 1, 1982 and resided continuously in an unlawful status for the duration of the requisite period consists primarily of a series of affidavits from individuals who claim to have worked with, resided with, employed or otherwise have known the applicant in the United States during the 1980s.

The AAO has reviewed each document in its entirety to determine the applicant's eligibility.

There is no contemporary documentation from the 1980s that shows the applicant to have resided continuously in the United States during the requisite period for legalization. For someone claiming to have lived in the United States since 1978, it is noteworthy that the applicant is

unable to produce a solitary piece of primary evidence during the following ten years through May 4, 1988.

The record reflects that although the applicant claims that she first entered the United States in February 1978 and resided continuously in the country through the requisite period, other documents in the file indicate otherwise. The record reflects that the applicant filed a Form I-589 (application for asylum and withholding of removal) on August 25, 1999. On that form, the applicant indicated that she last left her country on February 11, 1989 and that she last entered the United States on February 14, 1989. The applicant indicated in response to question # 18g – asking applicants whether they have previously entered the United States – "no." The applicant indicated that she has a son – [redacted] – born in Mexico on November 26, 1980. By her own admission, the applicant did not enter the United States until February 1989 and therefore has failed to meet the continuous residence requirement for legalization.

The record reflects that on a prior Form I-687 dated July 26, 1990 and the accompanying Form For Determination of Class Membership in CSS v. MEESE, the applicant indicated that she first entered the United States in February 1978 and resided continuously in the country for the duration of the requisite period except for one brief trip to Mexico from August 6 to August 16, 1987 to visit her sick mother. The applicant did not indicate any other absences from the United States during the 1980s. The applicant indicated that she has a son – [redacted] – born in Mexico on November 26, 1980. The birth of her son in Mexico in 1980 clearly shows that the applicant was not residing in the United States as she claims. The applicant further indicated on the 1990 Form I-687 that she was employed by [redacted] and [redacted] as a baby sitter from February 1978 to April 1985.

The record also reflects that on the Form I-687 the applicant filed in 2005, the applicant indicated that she was employed by [redacted] from February 1978 to 1980. The employment information on this Form I-687 is contrary to the employment information he provided on the 1990 Form I-687. The applicant submitted an affidavit by [redacted] which did not indicate that he employed the applicant at anytime, which further contradicted the two statements made by the applicant on the two Form I-687s. Mr. [redacted] merely indicated that the applicant lived with him in 1987 and that he knew the applicant traveled outside the United States to Mexico from August 6 to August 16, 1987.

The contradictory statements and documents provided by the applicant in support of her application and the absence of objective documents to reconcile or justify the contradictions, cast serious doubt on the veracity of the applicant's claim that she entered the United States before January 1, 1982 and resided continuously in the country through the requisite period.

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice without competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N

Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See id.*

The affidavits in the record from individuals who claim to have resided with, worked with, employed or otherwise have known the applicant during the during the 1980s, have minimalist or fill-in-the-blank formats with very little input by the affiants. Considering the length of time they claim to have known the applicant – in most cases since 1978 – the affiants provided very little details about the applicant's life in the United States, and the nature and extent of their interactions with her over the years. Nor are the affidavits accompanied by any documentary evidence – such as photographs, letters, and the like – of the affiants' personal relationships with the applicant in the United States during the 1980s. The affiants claim to have known that the applicant resided in the United States since 1978 but did not indicate the source of their knowledge about the applicant's residence in the country. The affiants did not provide documents to establish their own identities and residence in the United States during the 1980s.

Additionally, claims to have employed the applicant from April 1985 to December 1986, but provided no documentation to show that the applicant was employed during the years indicated. Ms. [redacted] claims that she knew that the applicant worked for [redacted] as a babysitter from February 1978 to April 1985, and for as a housekeeper from April 1985 to December 1986. However, the affidavit is contrary to the statement provided by the applicant on the Form I-687 she filed in 2005. On that form, the applicant indicated that she was employed by [redacted] from February 1978 to 1980. Also, the affidavit from Ms. is contrary to the affidavit from who claims that the applicant lived with him in 1987 but did not indicate that he employed the applicant at any time. For all the reasons discussed above, the AAO finds that the affidavits have little probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through the date of filing application.

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.

Therefore, based on the foregoing, the AAO determines that 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.