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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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SEP 29 2009

FILE:

MSC 06 032 11537

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. The file has been returned to the National Benefits Center. 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.

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

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.

On appeal, counsel for the applicant submits a brief. On appeal, counsel asserts that the applicant has provided “substantial” evidence to demonstrate her residence during the requisite period; there is nothing in the record to demonstrate that the applicant was ever in Mexico for more than 45 days during the requisite period; the applicant addressed some of the contradictions in her file at the time of interview; and, an extraordinarily large number of CSS/Newman cases have been denied by the Los Angeles office.

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).

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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 period, 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).

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 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.

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). *See* 8 C.F.R. 245a.15(b). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant’s own testimony. 8 C.F.R. § 245a.12(f). Affidavits indicating specific, personal knowledge of the applicant’s whereabouts during the relevant time period are given greater weight than fill-in-the-blank affidavits providing generic information.

The record shows that the applicant submitted the current Form I-687, Application for Status as a Temporary Resident Under Section 245A of the Immigration and Nationality Act, on November 1, 2005. The director denied the application on June 28, 2007.

The AAO maintains plenary power to review this matter 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 federal courts have long recognized the AAO’s *de novo* review authority. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The issue in this proceeding is whether the applicant has furnished sufficient evidence to demonstrate that she resided in the United States in an unlawful status throughout the requisite time period.

In support of her claim, the applicant has submitted the following documentation:

1. Documentation dated in or after 1989 indicating the applicant’s continuous unlawful residence in the United States since that date.
2. Affidavits from [REDACTED] stating the applicant used to baby sit her children in 1981, has resided in the United States continuously since 1981, and is a good friend of the family, and [REDACTED] stating the applicant has resided in the United States continuously since 1981 and that the applicant used to baby sit for her and her sibling. These affidavits lack details that would lend credibility to

the affiants' claimed 25-plus year relationships with the applicant and provide no basis for concluding that they actually had direct and personal knowledge of the events and circumstances of the applicant residence in the United States throughout the requisite period. As such, the statements can only be afforded minimal weight as evidence of the applicant's residence and presence in the United States throughout the requisite period.

3. Unverifiable handwritten receipts dated in 1981, 1983, and 1987, and photocopies of envelopes addressed to the applicant in the United States postmarked in 1981, 1985, and 1987.

It is noted that the applicant indicated on her Form I-687, that she had departed the United States on only one occasion since her alleged initial entry in 1981 – in July 1987 in order to visit Mexico for family matters. On a Form I-687, signed by the applicant in 1991, she also indicated that she had been absent from the United States on only one occasion – from June to July 1987 in order to visit Mexico because her mother was very sick. On that Form I-687, the applicant indicated she had no children. However, on a Form I-485, Application to Register Permanent Residence or Adjust Status, signed by the applicant in 2001, she indicated that she has five children – three of whom were born in Mexico in 1982, 1984 and 1987. Each of these applications were signed by the applicant under penalty of perjury.

Doubt cast on any aspect of the evidence as submitted may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, it is incumbent on the applicant to resolve any inconsistencies in the record by independent objective evidence; any attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided depends on the extent of the documentation, its credibility and amenability to verification.

It is concluded that the applicant has failed to establish her continuous residence in an unlawful status in the United States from prior to January 1, 1982, through the date she attempted to file a Form I-687 application 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.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 245a.2(d)(5) of the Act.

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