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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

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[REDACTED]

FILE:

[REDACTED]

Office: MEMPHIS

Date:

JAN 14 2010

XPW 80 713 01075
[REDACTED]

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.

Perry J. 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, 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, Memphis, Tennessee, and is now before the Administrative Appeals Office (AAO) on appeal. This appeal will be dismissed.

The applicant, a native of Mexico who claims to have lived in the United States since September 1981, 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 October 2, 1991. The director denied the application, finding (1) 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 and (2) that the applicant did not establish that she is a class member of the CSS/Newman (LULAC) lawsuits

On appeal, counsel asserts that the applicant has submitted sufficient credible evidence to establish that she meets the continuous residence required to adjust status under section 245A of the Act. Counsel submits copies of documents previously submitted into evidence with the appeal.

The AAO notes that in the Notice of Intent to Deny (NOID) dated May 6, 2008, the director did not notify the applicant of her intention to deny the applicant on the ground that the applicant did not establish that she is a class member of the CSS/Newman (LULAC) lawsuits as required under the settlement agreement. The AAO further notes that the director adjudicated the application on the merits and presumptively found the applicant eligible for class membership under the Terms of the CSS/Newman Settlement Agreements. Thus, the director's decision to deny the application on the ground that the applicant did not establish that she is a class member of the CSS/Newman (LULAC) lawsuits will be withdrawn.

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).

“Continuous residence” is defined at 8 C.F.R. § 245a.1(c)(1)(i) as follows: “An alien shall be regarded as having resided continuously in the United States if no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, through the date the application for temporary resident status is filed, unless the alien can establish that due to

emergent reasons, his or her return to the United States could not be accomplished within the time period allowed.”

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 AAO determines that the applicant has failed to meet her burden.

The record reflects that the documentation submitted by the applicant in support of her application consists primarily of affidavits from individuals who claim to have employed, rented an apartment to, or otherwise known the applicant in the United States during the 1980s. The affidavits have minimalist formats with little input by the affiants. The affiants do not have a direct personal knowledge of the events and circumstances of the applicant's entry and continuous residence in the United States during the requisite period.

The affidavits are in direct contradiction with the information provided by the applicant on the Form I-687 she filed in 1991. [REDACTED] claims that he and his wife employed the applicant to baby sit their two children from September 1981 to May 1983, and that the applicant resided with them at [REDACTED], during the period of her employment; [REDACTED] claims that he rented a room to the applicant in his home located at [REDACTED] from May 1983 through July 1984; [REDACTED] claims that he employed the applicant at his store located at [REDACTED] from May 1983 to July 1984; [REDACTED] claims that she employed the applicant as a live-in babysitter from July 1984 to July 1987, and that the applicant resided with her at [REDACTED] during the period of her employment; and [REDACTED] claims that she employed the applicant as a live-in caregiver for her mother from December 1987 to February 1990, and that during that period, the applicant lived with her mother. [REDACTED] did not provide the address.

On the Form I-687 the applicant completed and filed in October 1991, the applicant provided the following as her residences and employment history in the United States during the same period:

Residences:

- [REDACTED], from September 1981 to April 1984;
- [REDACTED], from May 1984 to February 1987;
- [REDACTED], from March 1987 to January 1990;
- [REDACTED] from January 1990 to August 1990; and
- [REDACTED] since September 1990.

Employment:

- [REDACTED] from October 1981 to September 1983;
- [REDACTED], from October 1983 to July 1985;
- [REDACTED] from August 1985 to July 1988;
- [REDACTED] from August 1988 to January 1990;
- [REDACTED], from February 1990 to December 1990; and
- [REDACTED], since February 1991.

It is indisputable from the record that the applicant has submitted contradictory statements and documents in support of her application. The applicant has not provided any objective evidence to explain or reconcile the contradictions. The contradictions call into serious question 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. Also, the contradictions call into question the credibility and reliability of the affidavits as credible evidence of the applicant's continuous residence in the United States during 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. *See 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.*

Additionally, the affiants provided very few details about the applicant's life in the United States and the nature and extent of their interaction with her over the years. The affidavits are not accompanied by any documentary evidence – such as photographs, letters, and the like – demonstrating the affiants' personal relationships with the applicant in the United States during the years. None of the affiants provided any documentation to establish their own identities and residence in the United States during the requisite period. In view of these substantive shortcomings, and apparent contradictions, 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 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.

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.