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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

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FILE: [REDACTED]
MSC-08-183-10969

Office: NEWARK

Date: **JAN 28 2010**

IN RE: Applicant: [REDACTED]

APPLICATION: Application to Adjust Status from Temporary to Permanent Resident Status 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. 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 Rhew
Chief, Administrative Appeals Office

DISCUSSION: The applicant filed a Form I-698 Application to Adjust from Temporary to Permanent Resident Status which was subsequently denied by the Director, Newark, New Jersey. The application is before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application noting that the applicant is statutorily ineligible to adjust status from temporary to permanent residence because the applicant failed to establish her continuous unlawful residence in the United States for the duration of the requisite period.

On appeal, the applicant indicates that the director's decision was contrary to law and facts and that she has presented evidence establishing her qualification for the benefits sought.

The applicant was granted temporary resident status on November 5, 2007. The record shows that the Application for Adjustment of Status from Temporary to Permanent Resident (Form I-698) was received, along with the proper fee, by USCIS on March 28, 2008. On May 15, 2009 the application to adjust from temporary to permanent resident status was denied and the applicant's temporary resident status was terminated. The director denied the application indicating that the applicant failed to establish her continuous unlawful residence in the United States pursuant to Section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2).

On appeal, the applicant asserts that she has established her unlawful residence for the requisite time period. She asserts that the director's decision was contrary to the law and facts.

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 1982 and lived in an unlawful status during the requisite period consists of the following:

- An affidavit from [REDACTED], the applicant's sister, who indicates that the applicant entered the United States in 1981 to help her with her first pregnancy. She indicates that the applicant lived with her in Somerset, New Jersey until moving to Warrensburg, New York in 1982. She further indicates that they would visit each other every other

weekend, until 1987 when the affiant and the applicant both moved to Freehold, New Jersey.

- A letter addressed to the applicant dated August 30, 1987 indicating an address at the [REDACTED] in Warrensburg, New York.

The record also contains several documents including an *estoppel* certificate indicating that the applicant's husband purchased a property known as the [REDACTED] in August 1982, a Bill of Sale for a business in the name of the applicant's husband and a chattel mortgage also in the name of the applicant's husband dated May 1988. None of these documents are probative of the applicant's continuous unlawful residence in the United States as they do not contain the applicant's name or any identifying information. It is not sufficient that they refer to the applicant's husband, as each applicant must demonstrate his/her continuous unlawful residence for the entire 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. Specifically, the applicant has not submitted sufficient evidence of either her entry to the United States prior to January 1, 1982 or her continuous unlawful residence for the entire relevant period.

Therefore, based upon the foregoing, the applicant is ineligible for temporary residence because she 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*. Any temporary resident status previously granted to the applicant is terminated.

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