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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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[redacted]

FILE: [redacted] Office: LOS ANGELES Date: MAR 12 2010

SRC-02-045-54129

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. 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.

Elizabeth McCormack

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The director of the Los Angeles office terminated the temporary resident status of the applicant, pursuant to the terms of the CSS/Newman Settlement Agreements, finding the applicant to be ineligible for temporary resident status based on both a lack of documentation and inconsistent documentation in the record of proceedings.

On appeal, the applicant asserts that the director's decision is erroneous because the evidence which she previously submitted establishes by a preponderance of the evidence that she continuously resided in the United States in an unlawful status for the duration of the requisite time period. The applicant has submitted additional evidence on appeal. The AAO has reviewed all of the evidence, and has made a *de novo* decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.[1]

The temporary resident status of an alien may be terminated upon the determination that the alien was ineligible for temporary residence. Section 245A(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1255a(b)(2)(A), and 8 C.F.R. § 245a.2(u)(i).

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).

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).

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[1] 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 long been recognized by the federal courts. *See, e.g. Dor v. INS,* 891 F.2d 997, 1002 n.9 (2d Cir. 1989).

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. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *Matter of Ho,* 19 I & N Dec. 582, 591-592 (BIA).

The issue in this proceeding is whether the applicant has overcome the inconsistencies in the record and established her eligibility for temporary resident status. As stated, the applicant must establish that she (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 witness statements and documents. The AAO has reviewed the witness statements in their entirety to determine the applicant's eligibility; however, the AAO will not quote each statement in this decision. Some of the evidence submitted indicates that the applicant resided in the United States after May 4, 1988; however, because evidence of residence after May 4, 1988 is not probative of residence during the requisite time period, it shall not be discussed.

The record contains witness statements from [redacted] and [redacted] The statements are general in nature and state that the witnesses have knowledge of the applicant's residence in the United States for the duration of requisite period.

Although the witnesses claim to have personal knowledge of the applicant's residence in the United States during the requisite period, the witness statements do not provide concrete information, specific to the applicant and generated by the asserted associations with her, which would reflect and corroborate the extent of those associations, and demonstrate that they were a sufficient basis for

reliable knowledge about the applicant's residence in the United States during the requisite period. To be considered probative and credible, witness statements must do more than simply state that a witness knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that it probably did exist and that the witness, by virtue of that relationship, does have knowledge of the facts alleged. For instance, the witnesses do not state how they date their initial meeting with the applicant in the United States, or specify social gatherings, other special occasions or social events when they saw and communicated with the applicant during the requisite period. The witnesses also do not state how frequently they had contact with the applicant during the requisite period. The witnesses do not provide sufficient details that would lend credence to their claimed knowledge of the applicant's residence in the United States during the requisite period. For these reasons the AAO finds that the witness statements do not indicate that their assertions are probably true.

In addition, [redacted] states that he is the husband of the applicant. The birth certificate of the applicant's daughter, [redacted] lists the applicant as the mother and [redacted] as the father.[2] However, at the time of her interview on May 27, 2009, the applicant states that she has never married, and that [redacted] is the child's uncle. Due to these inconsistencies, the testimony of the witness has minimal probative value.

The applicant has submitted an employment verification letter from [redacted] president of [redacted] in Los Angeles, who states that the applicant worked for the company as a sewing machine operator from October 20, 1980 until at least the date of the letter on May 26, 1983.

The employment verification letter from [redacted] does not meet the requirements set forth in the regulations, which provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment. The regulation at 8 C.F.R. § 245a.2(d)(3)(i) provides that letters from employers must include: (A) Alien's address at the time of employment; (B) Exact period of employment; (C) Periods of layoff; (D) Duties with the company; (E) Whether or not the information was taken from official company records; and (F) Where records are located and whether the Service may have access to the records. If the records are unavailable, an affidavit-form letter stating that the alien's employment records are unavailable and why such records are unavailable may be accepted in lieu of subsections (E) and (F). The employment verification letter fails to comply with the above cited regulation because it lacks considerable detail regarding the applicant's employment. For instance, the witness does not state the applicant's daily duties as a sewing machine operator, number of days she was employed, or the location at which she was employed. Furthermore, the witness does not state how he was able to date the applicant's employment. It is unclear whether he referred to his own recollection or any records he may have maintained. For these reasons, the employment verification letter is of little probative value.

The applicant has submitted a receipt dated July 21, 1982 from the California Department of Motor Vehicles for a state identification card. This document is evidence in support of the applicant's presence in the United States on July 21, 1982.

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[2] Although the applicant is listed as the mother on [redacted] birth certificate, registered and signed by the applicant on April 5, 1990, the applicant stated at the time of her interview that [redacted] is not her biological child, but was given to her as a gift when the child was three.

The applicant has submitted a statement of earnings and employers from the Social Security Administration, listing the applicant's earnings and employers from 1979 through 1985. However, the statement of earnings is inconsistent with the testimony of the applicant in the instant I-687, and in the initial I-687 filed in 1992 to establish her CSS class membership. The statement of earnings states that the applicant worked for [redacted] of Burbank in 1979, and for [redacted] of Los Angeles in 1981 and 1982. However, in the I-687 applications the applicant does not list any employment with these companies at any time during the requisite period. Although this document would be some evidence of support of the applicant's presence in the United States from 1979 through 1985, due to these inconsistencies this document is of minimal probative value.

The record contains 1983 and 1984 federal and state income tax returns as well as 1983 and 1984 W-2 forms. The federal and state tax returns list an address for the applicant at [redacted] in Los Angeles. These documents are inconsistent with the testimony of the applicant in the I-687 applications, in which the applicant does not list this address as her residence at any time during the requisite statutory period. Although these documents would be some evidence in support of the applicant's presence in the United States in 1983 and 1984, due to these inconsistencies the documents have minimal probative value.

The applicant has submitted pay stubs from The Cotton Patch from February 14, 1985 through May 23, 1985. These documents are some evidence in support of the applicant's presence in the United States from February 14, 1985 through May 23, 1985.

The record contains a copy of a bankbook page containing information regarding an account in the names of the applicant, [redacted] and [redacted][3] The bankbook page states that account number [redacted] has an issuance date of October 30, 1981. However, the bottom of the bankbook page lists a revision date of June 1986, which is inconsistent with the bankbook containing information prior to that date. Due to this inconsistency, the bankbook page has minimal probative value.

The record contains a copy of a bankbook page containing information regarding an account in the names of the applicant and [redacted] The bankbook page states that account number [redacted] has an issuance date of October 29, 1982. The applicant has also submitted copies of ten pages of a bankbook for the account, listing activity on the account from October 30, 1981 through December 26, 1984. The bankbook pages are some evidence in support of the applicant's presence in the United States from October 30, 1981 through December 26, 1984.

The record contains a copy of an additional bankbook page from account number [redacted] listing activity on the account from November 2, 1986 through April 18, 1987. The bankbook pages are some evidence in support of the applicant's presence in the United States from November 2, 1986 through April 18, 1987.

[3] At the time of her interview on May 27, 2009, the applicant stated that [redacted] is her sister-in-law.

The record contains a copy of an additional bankbook page from account number [redacted], listing the accrual of quarterly interest on the account from September 22, 1985 through March 30, 1987. However, the bottom of the bankbook page lists a revision date of June 1986, which is inconsistent with the bankbook containing information prior to that date. In addition, it appears that information has been removed from the document. Further, the starting balance at the top of the page does not reconcile with the remaining totals on the page.[4] Although this bankbook page would be evidence in support of the applicant's presence in the United States from September 22, 1985 through March 30, 1987, due to these inconsistencies, this document has minimal probative value.

The record contains 1985 federal and state income tax returns as well as a 1985 W-2 form. The federal and state tax returns list an address for the applicant at [redacted]. in Los Angeles. In addition, in the state return the applicant filed for a renter's credit for having resided in an apartment at [redacted]. in Los Angeles. These documents are inconsistent with the testimony of the applicant in the I-687 applications, in which the applicant does not list these addresses as her residence at any during the requisite statutory period. Although these documents would be some evidence in support of the applicant's presence in the United States in 1985, due to these inconsistencies the documents have minimal probative value.

The record contains documents relating to deportation proceedings commenced by the director of the Los Angeles office against the applicant, on the basis of her illegal entry into and continued unlawful status in the United States. At the time of her interview on May 27, 2009, the applicant stated that these proceedings were commenced when she was arrested at work in 1983. The applicant states that she did not appear at a subsequent court hearing.[5] The documents relating to the deportation proceedings are dated April 26, 1983, April 28, 1983 and June 11, 1986. Although these documents are some evidence in support of the applicant's presence in the United States on April 26, 1983, April 28, 1983 and June 11, 1986, they do not establish the applicant's continuance residence in the United States for the duration of the requisite period.

The record contains a W-2 form for 1988. This document is some evidence in support of the applicant's presence in the United States in 1988.

The remaining evidence in the record is comprised of copies of the applicant's statements, the instant I-687 application, the initial I-687 application, filed in 1992 to establish the applicant's CSS class membership, and a Form I-698, application to adjust status from temporary to permanent resident.[6] The AAO finds in its *de novo* review that the record of proceedings contains many materially inconsistent statements from the applicant regarding her residences in and absences from the United States during the requisite statutory period.

In the instant I-687 application, filed in 2001, and in the initial I-687 application filed in 1992, the applicant stated that she has been absent from the United States two times, from May 5, 1987 to June 2, 1987 and from October 1987 to November 4, 1987. However, at the time of her interview on May 27,

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[4] In addition, the totals listed for December 1986 and March 1987 in this exhibit are not consistent with the totals listed for those months on the previous exhibit.

[5] It appears that the record relating to the deportation proceedings is contained in file number [redacted].

[6] The applicant's I-698 application has been denied.

2009 the applicant stated that, since her entry into the United States in 1975, she has not had any absences from the United States during the requisite period.[7]

The director of the Los Angeles Office cited some of the aforementioned inconsistencies in a notice of intent to terminate (NOIT) the applicant's temporary residence. In rebuttal to the NOIT, the applicant asserted that the evidence which she previously submitted establishes by a preponderance of the evidence that she continuously resided in the United States in an unlawful status for the duration of the requisite time period. The applicant submitted several of the documents discussed above in response to the NOIT. On appeal, the applicant submitted the witness statements of [redacted] and [redacted], as well as several of the documents discussed above.

The AAO finds that the applicant has failed to provide probative and credible evidence of her continuous residence in the United States for the duration of the requisite period. The inconsistencies regarding the applicant's residences in and absences from the United States are material to the applicant's claim in that they have a direct bearing on the applicant's residence in the United States during the requisite period. No evidence of record resolves these inconsistencies. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence pointing to where the truth lies. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *Matter of Ho,* 19 I & N Dec. 582, 591-592 (BIA). These contradictions undermine the credibility of the applicant's claim of entry into the United States prior to January 1, 1982 and continuous residence in the United States during 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. The various statements currently in the record which attempt to substantiate the applicant's residence and employment in the United States during the statutory period are not objective, independent evidence such that they might overcome the inconsistencies in the record regarding the applicant's claim that she maintained continuous residence in the United States throughout the statutory period, and thus are not probative.

Based on the foregoing, the AAO finds that the applicant has failed to resolve the inconsistencies in the record with independent objective evidence. Furthermore, 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. As the applicant has not overcome the basis for the termination of status, the appeal must be dismissed.

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

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[7] The applicant stated at the time of her interview that her only absence from the United States was in 2004. This statement is inconsistent with her signature on her daughter's Mexican birth certificate, filed on April 5, 1990. This statement is also inconsistent with her testimony in the I-698 application, filed in 2006, that she has been absent from the United States in 2004 and 2006.