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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]

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FILE:

[REDACTED]

Office: LOS ANGELES

Date:

NOV 22 2010

IN RE:

Applicant:

[REDACTED]

APPLICATION: Application for Temporary Resident Status under 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 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 of the Los Angeles office and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant 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 (LULAC) Class Membership Worksheet. The director denied the application, finding that the applicant was ineligible for adjustment to temporary resident status because 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 time period.

On appeal, the applicant asserts 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 has not submitted any additional evidence on appeal.¹ The AAO has considered the applicant's assertions, 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.²

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).

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.

¹ The documents that the applicant submits on appeal have previously been submitted into the record. The letter from a representative of [REDACTED] nearly identical to two previous letters, bears a new date of February 4, 2010.

²The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

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. 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 established 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 one witness statement and documents. The AAO has reviewed each document in its entirety to determine the applicant's eligibility; however, the AAO will not quote the witness 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 a witness statement from [REDACTED], the applicant's sister, who states that she and the applicant first entered the United States in June 1981, and resided together with their parents on [REDACTED]. The witness does not state for how long she lived on [REDACTED]. The witness states that because the applicant resided with alcoholic parents, the applicant "didn't assist school as mandatory because they wouldn't take her."

Although the witness claims to have personal knowledge of the applicant's residence in the United States during the requisite period, the witness's statement does 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 witness does not specify social gatherings, other special occasions or social events when she saw and communicated with the applicant during the requisite period, nor indicate when they lived together. The witness also does not state how frequently she had contact with the applicant during the requisite period. The witness does not provide sufficient details that would lend credence to her claimed knowledge of the applicant's residence in the United States during the requisite period. For these reasons the AAO finds that the witness's statement does not indicate that its assertions are probably true.

Further, the witness's statement is inconsistent with documents submitted by the applicant in rebuttal to the notice of intent to deny (NOID) the application. In rebuttal to the NOID, the applicant submitted copies of a letter from [REDACTED], and an elementary school cumulative record card from the Los Angeles Unified School District, stating that the applicant attended school from kindergarten through sixth grade, from September 13, 1981 until June 21, 1988. The cumulative record card also lists six parent/teacher progress conferences which the applicant's mother attended from 1982 to 1985, in which the mother is described as cooperative and concerned. Due to these inconsistencies, the witness's statement will be given no weight.

In addition, the documents submitted by the applicant in rebuttal to the NOID are inconsistent with information contained in a Form EOIR-42B, application for cancellation of removal, and supporting documentation, submitted by the applicant in 2001. As stated above, in rebuttal to the NOID, the applicant submitted copies of a letter from [REDACTED] and an elementary school cumulative record card from the Los Angeles Unified School District, stating that the applicant attended school from September 13, 1981 to June 21, 1988. Also in rebuttal to the NOID, the applicant submitted a copy of a California school immunization record, listing vaccinations administered to the applicant on December 1981, March 1982, September 1983 and September 1985, although the vaccination record does not identify the person or medical facility administering the vaccines. However, in the Form EOIR-42B at part 3, number 19, the applicant states that she first arrived in the United States in December 1989. In support of the Form EOIR-42B, the applicant submitted a junior and senior high schools cumulative record from the Los Angeles Unified School District, stating that the applicant attended 9th grade in 1992 to 1993, after the requisite statutory period. Also in support of the EOIR-42B, the applicant submitted a copy of an immunization record from a health center in Los Angeles, listing vaccinations administered to the applicant in 1992 and 1993. Due to these inconsistencies, the letter from the Stanford Elementary School, the elementary school cumulative record card, and the California school immunization record showing vaccinations from 1981 through 1985 will be given no weight.

The remaining evidence in the record is comprised of copies of the applicant's statements and the I-687 application. The AAO finds in its *de novo* review that the record of proceedings contains materially inconsistent statements from the applicant regarding the date of her first entry into the United States during the requisite statutory period.

In the I-687 application, the applicant lists one residence in California from 1981 through the end of the requisite period. The applicant states that she was a student in California for the same period. She listed one absence from the United States during the requisite period, from June to August 1987.

In the Form EOIR-42B, at numbers 17, 19, 20 and 21, the form states that the applicant first entered the United States without inspection at San Ysidro, California in December 1989.³

In a Form I-589, application for asylum, signed by the applicant's husband on November 11, 1998, at numbers 15, 16 and 21, the applicant's husband states that the applicant last entered the United States in March 1992 at San Ysidro, and does not list any previous entries into the United States for the applicant.

In a statement made to an agent of United States Immigration and Customs Enforcement (USICE) on December 22, 2008, the applicant stated that she entered the United States on March 31, 1992 at or near San Ysidro.

³ The EOIR-42B is not signed or dated. The Immigration Judge heard the application and denied it on November 23, 2004.

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 date the applicant first entered 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 documents currently in the record which attempt to substantiate the applicant's residence 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.

The record reveals that removal proceedings were instituted against the applicant on July 26, 1999. On November 23, 2004, the Immigration Judge ordered the applicant to be removed should she not voluntarily depart by January 20, 2005, which date was subsequently extended to April 9, 2006 by the Board of Immigration Appeals (BIA). The applicant did not depart the United States. A Form I-205, warrant of removal/deportation, was issued on December 19, 2008, which remains outstanding.

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.