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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



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



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DATE: **AUG 27 2012**

OFFICE: LOS ANGELES

FILE:

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:

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.

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

On September 20, 2005, the applicant submitted a Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (Act). On March 27, 2012, the director of the Los Angeles office denied the I-687 application, finding that the applicant failed to establish continuous presence in the United States since before January 1, 1982 through the requisite period, and failed to establish her eligibility for temporary resident status.

On April 23, 2012, the applicant submitted a Form I-694, Notice of Appeal of Decision Under Section 210 or 245A. The applicant maintains her claim of entry into the United States before January 1, 1982 and requests an additional extension of 180 days to provide further evidence in support of her claim. The applicant fails to provide a compelling reason for an extension beyond 30 days. As of the date of this decision, which is over 118 days, no additional evidence or brief has been received; therefore, the record will be considered complete. The director's decision will be withdrawn and the AAO will consider the applicant's claim *de novo*, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(d)(6).¹

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 245(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)(1) 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 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

¹ The 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).

documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.2(d)(5). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her 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).

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).

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.* at 80. 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 petitioner 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, 431 (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 established 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. The evidence submitted in support of the applicant's claim to have arrived in the United States before January 1982 and to have resided in an unlawful status during the requisite period consists of copies of a medical letter, affidavits from nine individuals claiming to know the applicant during the requisite period, copies of two employment affidavits, and copies of receipts, airline ticket, postmarked envelopes, a money order, and a W2 form. Some of the evidence submitted indicates that the applicant resided in the United States after the requisite period; however, because evidence of such residence is not probative of residence during the requisite time period, it shall not be discussed. The AAO has reviewed the document to determine the applicant's eligibility.

The copy of a letter from [REDACTED], states that he treated the applicant in his clinic from August 1981 until November 1981. While the letter will

be given some weight in support of the applicant's claim, the declarant fails to provide sufficient details regarding the applicant's diagnosis or treatment plan that would reflect and corroborate the extent of his association, and demonstrate that the declarant has a sufficient basis for reliable knowledge about the applicant's residence in the United States during the requisite period.

The affidavits from [REDACTED] are general in nature and state that they have known the applicant in the United States for all, or a portion, of the requisite period. The statements do not provide concrete information, specific to the applicant and generated by the asserted associations with the applicant, which would reflect and corroborate the extent of those associations, and demonstrate that the affiants have a sufficient basis for reliable knowledge about the applicant's residence in the United States during the requisite period.

The first five affiants (mostly the applicant's nieces and nephews) state that the applicant babysat them for all, or a portion, of the requisite period. The affidavits are virtually identical except for a few words and dates. The majority of the affiants state that the applicant babysat them at a very young age, one as young as 2 years old, but they fail to indicate the basis for their knowledge or recollection of the exact dates. Some of the affiants include copies of photographs of themselves, but the photographs are not independently verifiable by person, date or location.

The affidavits from [REDACTED] state that they have known the applicant since 1981, but fail to provide concrete details regarding the applicant's place of residence, employment or circumstances of her residence in the United States during the requisite period. [REDACTED] states that she resided with the applicant from February 1981 to the present (1990) at [REDACTED] however, the affiant fails to provide sufficient details which would reflect and corroborate the extent of her associations, and demonstrate that she has a sufficient basis for reliable knowledge about the applicant's residence in the United States claimed nine year period.

It is also noted that the record contains an inconsistency in the two statements from [REDACTED]. In his affidavit, he states that he has known the applicant since January 1982 when she babysat him; whereas, in his second letter, he states he has known the applicant since 1988. This inconsistency detracts from the credibility of the applicant's claim.

The record also contains employment letters from [REDACTED]. Both employers state that they have known the applicant since February 1981 and have employed her as a housekeeper since May 1981. Neither employer provides sufficient details such as her place of residence during the employment period or the applicant's employment terms (i.e. duties, wages, hours, etc.). Lacking specific details, the statements are not deemed credible and shall be afforded little weight as evidence in support of the applicant's claim.

The record also contains copies of a March 1983 receipt, a July 1985 receipt, and a September 1987 airline ticket. These documents will be given some weight.

The record contains copies of five postmarked envelopes and a money order. The dates on the documents are either illegible or fall outside the requisite period. The money order is completely illegible. Given this, the documents provide no probative value as evidence in support of the applicant's claim.

The record contains a copy of a barely legible 1987 W2 form, in the name of [REDACTED]. There is nothing in the record to indicate that [REDACTED] and the applicant are one and the same person. In addition, the social security number on the W2 is different from the social security number listed on the applicant's Form I-687. This discrepancy brings into question the credibility of the document and casts doubt on the applicant's claim.

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. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The evidence, in totality, provides a general account of the applicant's claimed residence in the United States during the requisite period and fails to provide specific details which would reflect and corroborate a reliable knowledge of the circumstances of the applicant's residence for the length of time claimed by the witnesses. While there is some evidence of the applicant's presence in the United States for specific portions of the requisite period, the evidence fails to establish a continuous residence in the United States for the duration of the requisite period. In addition, the noted inconsistencies and discrepancies cast serious doubt on the credibility of the applicant's claim. Upon a *de novo* review of all of the evidence in the record, the AAO finds that the applicant has not established that she is eligible for the benefit sought.

Based upon the foregoing, the AAO finds that the applicant has failed to establish by a preponderance of the evidence that she continuously resided in an unlawful status in the United States from before January 1, 1982 through 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.