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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

L1

[redacted]

DATE: JAN 06 2012 Office: HARTFORD FILE: [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 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 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, Hartford. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record indicates that the applicant filed a Form I-687 Application for Temporary Resident Status on April 6, 2007. On December 16, 2007, the director denied the application for failure to appear for a scheduled interview or to request a rescheduling prior to or on the date of the interview. Thus, the director indicated that the application was abandoned. On May 3, 2007, the applicant filed a motion to reopen stating that she did not receive the interview notice. On January 16, 2008, the director denied the motion to reopen indicating that the interview notice was mailed to the address of record.

On October 4, 2010, U.S. Citizenship and Immigration Services (USCIS) informed the applicant that, pursuant to a recent court order, applications for temporary resident status may not be denied based on abandonment. [1] The applicant was informed that she was entitled to file an appeal with the AAO which must be adjudicated on the merits.

On appeal, counsel states that the applicant did not receive notice of the May 19, 2005 interview. The AAO notes that the interview notice was mailed to the applicant's address of record, the same address listed on the Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative submitted on appeal and dated November 2, 2010.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Following *de novo* review, the AAO found that that the director's basis for denial of the Form I-687 was in error. However, the AAO identified alternative grounds for denial of the application. Specifically, the AAO noted that the applicant failed to submit sufficient evidence in support of her application.

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).

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[1] On December 14, 2009, the United States District Court for the Eastern District of California ruled that United States Citizenship and Immigration Services (USCIS) may not apply its abandonment regulation, 8 C.F.R. § 103.2(b)(13), in adjudicating legalization applications filed by CSS class members. *See, CSS v. Michael Chertoff,* Case 2:86-cv-01343-LKK-JFM.

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 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 (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 applicant submits evidence of residence outside of the requisite period. This evidence is not probative of the applicant's residence during the requisite period.

In an attempt to establish continuous unlawful residence since before January 1, 1982 through the end of the relevant period, the applicant provided written statements from [redacted], and [redacted].

The declarations contain statements that the declarants have known the applicant for years and that attest to the applicant being physically present in the United States during the required period. These statements fail, however, to establish the applicant's continuous unlawful residence in the United States for the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality; 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.

The witnesses' 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 they were a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the affidavit. To be considered probative and credible, witness affidavits must do more than simply state that an affiant 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 the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Upon review, the AAO finds that, the witnesses' statements do not indicate that their assertions are probably true. Therefore, they have little probative value.

The applicant also provided a notarized letter signed by [redacted] and dated September 10, 1993. The letter states that the applicant worked as a babysitter and "cleaning person" for [redacted] from August 1983 to May 1989. The letter states that in the beginning, the applicant was paid $80 per week for 30 hours and in 1989 the applicant was paid $125 per week.

The letter fails to meet certain regulatory standards set forth at 8 C.F.R. § 245a.2(d)(3)(i), which provides that letters from employers must include the applicant's address at the time of employment; exact period of employment; whether the information was taken from official company records and where records are located and whether USCIS may have access to the records; if records are unavailable, an affidavit form-letter stating that the employment records are unavailable may be accepted which shall be signed, attested to by the employer under penalty of perjury and shall state the employer's willingness to come forward and give testimony if requested. The letter submitted does not include much of the required information and can only be accorded minimal weight as evidence of the applicant's residence in the United States for the duration of the requisite period.

The record also contains photocopies of a Bellevue Hospital Center receipt, appointment slip, and medical record dated December 17, 1981 listing the applicant's name and address. The AAO notes that the appointment slip and medical record list [redacted] as the treating physician. According to the New York State Education Department (NYSED), there is only one licensed doctor in the State of New York named [redacted] The NYSED states that [redacted] received her medical degree from the [redacted] on May 15, 1990. [redacted] biographical information on the [redacted] website states that she did her internship and internal medicine residency at the [redacted] in New

[2] See www.nysed.gov. Website viewed by the AAO on January 3, 2012.

York from 1990 to 1993.[3] Further, the AAO notes that the appointment slip is dated "Monday, December 17, 1981" and December 17, 1981 was a Thursday.[4] However, December 17, 1990 was a Monday.[5]

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 unless the applicant submits competent 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. *See Matter of Ho,* 19 I&N Dec. 582, 591-92 (BIA 1988).

The record also contains a November 18, 1986 form letter from [redacted]. listing the applicant's name and address, and [redacted] receipt listing the applicant's name and address. The record also contains certificates of English as a Second Language course completion from [redacted] dated Fall 1987, Winter 1987, and Spring 1988. Finally, the record contains a letter dated July 17, 2001 on The [redacted] letterhead stating that the applicant was registered in the part-time non-intensive [redacted] at [redacted] from Fall 1987 to Spring 1992. These documents are some evidence that the applicant was in the United States during some portion of the requisite period.

The AAO notes that the applicant was 11 years old in 1981. In her affidavit, [redacted] states that she is the applicant's godmother and that the applicant lived with her from December 1981 to August 1990. [redacted] states that she provided the applicant with a room and food. [redacted] also states that the applicant worked as a babysitter for [redacted] from 1983 to May 1989. On appeal the applicant states that she did not attend school because she did not speak English and did not have a birth certificate.

The AAO also notes that in the Form I-687 filed on February 28, 2005, the applicant listed an absence to Mexico as a "family visit" until December 1981. This information is inconsistent with the applicant's statement that she first entered the United States on December 1, 1981 and from the Form I-687 signed on August 3, 1993 and submitted in connection with the application for class membership where the applicant did not list an absence prior to December 1, 1981.

On December 8, 2011, the AAO issued a notice of intent to deny (NOID) informing the applicant of the deficiencies in the record and providing her with an opportunity to respond. In response, counsel submitted a statement from the applicant, an affidavit from [redacted], and many documents dated after the requisite time period. The statement and affidavit generally provide the same information as the applicant's and [redacted] previous statements in the record of proceeding. The statements also explain why the applicant came to live with [redacted].

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[3] See www.suffolkheartgroup.com. Website viewed by the AAO on January 3, 2012.
[4] See www.timeanddate.com. Website viewed by the AAO on January 3, 2012.
[5] See www.timeanddate.com. Website viewed by the AAO on January 3, 2012.

In response to the AAO's NOID counsel states that the applicant did not receive any vaccinations prior to August 16, 2001 and explains that the applicant is unable to submit new affidavits for individuals who previously submitted affidavits because they have died.

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.