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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

[redacted]

L1

DATE: JUL 05 2012 OFFICE: HOUSTON 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 your case. The file has been returned to the National Benefits Center. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The applicant's temporary resident status was terminated by the Field Office Director, Houston, Texas. The decision to terminate is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant filed an application for temporary resident status under section 245A of the Act (Form I-687), together with a Form I-687 Supplement, CSS/Newman (LULAC) Class Membership Worksheet, on March 25, 2005. The Form I-687 application was approved on May 5, 2008.

On February 21, 2012, the director terminated the applicant's temporary resident status after determining that the applicant had failed to establish the requisite continuous unlawful residence and continuous physical presence in the United States. The director noted that the applicant responded to a June 23, 2011 Notice of Intent to Terminate (NOIT), but failed to submit sufficient evidence to overcome the reasons for termination.

On appeal, counsel asserts that the evidence provided is sufficient to establish the applicant's eligibility for temporary resident status, and submits a brief.

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]

An applicant for temporary resident status – under section 245A of the Immigration and Nationality Act (the Act) – 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. *See* 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. *See* 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. *See* 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. *See* 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

[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).

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).

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 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 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.

Although the regulations provide an illustrative list of contemporaneous documents that an applicant may submit, the list also permits the submission of affidavits and any other relevant document. *See* 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that she continuously resided in the United States in an unlawful status from before January 1, 1982 through the date she attempted to file a Form I-687 during the original one-year application period that ended on May 4, 1988. After reviewing the entire record, the AAO determines that she has not met her burden of proof.

The applicant stated on a form to determine class membership, which she signed under penalty of perjury on December 3, 1995, that she first entered the United States in November 1981, when she

crossed the border without inspection. On her Form I-687, Application for Status as a Temporary Resident, which she signed under penalty of perjury on December 3, 1995 and again on May 31, 1996, the applicant stated that her only absence from the United States during the required period was in July 1987. The applicant further stated that she worked for [redacted] from November 1981 to June 1988. The applicant also stated that she lived at the following address: 128 Volney in Houston from November 1981 to August 1987, and at [redacted] from August 1987 to June 1988.

In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant submitted the following evidence:

1. An affidavit from [redacted], in which she stated that she had known the applicant since November 1981, that she met her in their neighborhood at [redacted] and that they have been friends since the applicant moved to Houston. The applicant stated on her Form I-687 application that she moved to [redacted] August 1987. Therefore, the affiant's statement that she met the applicant in their [redacted] neighborhood in 1981 is questionable.

2. An October 6, 2004 affidavit from [redacted], in which she stated that she had known the applicant since December 1982. [redacted] stated that she worked with the applicant for eight years, but did not state for whom and where they worked.

3. An October 10, 2004 affidavit from [redacted], in which she certified that she had known the applicant since December 1982.

4. An October 15, 2004 sworn statement from [redacted], in which she certified that she had known the applicant since December 1982.

5. In an October 6, 2004 affidavit, [redacted] stated that she had known the applicant since "the early 80's." The affiant did not state the circumstances under which she met the applicant or how she dated their relationship. In an October 12, 2004 affidavit, [redacted] stated that she had known the applicant since 1982. However, [redacted] added no additional details regarding when or how she met the applicant.

The affiants do not provide any details as to how they date their acquaintance with the applicant, how frequently and during what periods they had contact with the applicant since they met, and during what periods they resided in the same area or participated in activities together. We note the long passage of time since the requisite period expired. However, in that several of the affiants attest to their friendship with the applicant and to her character, it is reasonable to expect that they would be able to provide details of their knowledge of their acquaintance and activities with the applicant, and how they maintained contact after they met. The affidavits are, therefore, not probative of the applicant continuous residence.

It is noted that during her LIFE Act adjustment interview on September 28, 2004, the applicant told the interviewer that she worked as a babysitter for eight years after she arrived in the United States. This statement is inconsistent with her Form I-687 application, on which she stated that she worked in the kitchen of a market until June 1988, when she began working as a babysitter for [redacted]. 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. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The applicant submitted no documentary evidence, such as canceled paychecks, pay stubs, or similar evidence, to explain the inconsistencies in the record.

The applicant also reiterated that her only absence after her arrival in 1981 was in July 1987, when she traveled to Mexico for five days to visit her family. Although she stated on her Form I-485, Application to Register Permanent Resident or Adjust Status, that she had a son born in Mexico on October 7, 1982, the applicant denied that she had a son and denied that she traveled to Mexico to register a birth in 1982. On appeal, counsel asserts that the applicant lied about her son because she felt she would be disqualified if she admitted to leaving the United States to give birth. The applicant submits a May 25, 2005 affidavit in which she states that she was "scared and nervous" during the interview "and somehow made a bad choice." Counsel also asserts that the applicant traveled to Mexico during the first week in October and remained there for three weeks after giving birth to her child. However, the applicant does not state when she went to Mexico to give birth or how long she remained there. No other evidence in the record supports counsel's assertions about the applicant's departure and return to the United States in 1982. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The applicant's failure to admit to this absence in 1982 raises a question as to her credibility.

The record reflects that the applicant was apprehended on December 30, 1999 and charged with a violation of 8 U.S.C. § 1325(a)(3), attempting to enter or obtain entry to the United States by a willfully false or misleading representation. The applicant was sentenced to three years probation and expeditiously removed from the United States. The record contains a Form I-690, Application for Waiver of Grounds of Excludability, filed with the district office on August 1, 2005 (MSC 05 305 12078). The record does not reflect that the director has issued a decision on this application.

As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the applicant's reliance upon documents with minimal probative value, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982, through May 4, 1988.

Based on the foregoing analysis of the evidence, the AAO concludes that the applicant has failed to establish her continuous unlawful residence in the United States throughout the requisite period. Thus, the record does not establish that the applicant entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from that date through the date she attempted to file a Form I-687 during the original one-year application period that ended on May 4, 1988. Accordingly, the applicant is ineligible for temporary resident status under section 245A(a)(2) the Act.

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