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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: MAR 14 2012 Office: LOS ANGELES 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:

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 approved on April 24, 2007. The applicant's temporary resident status was subsequently terminated by the Director, Los Angeles on November 28, 2011. The decision 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 Class Membership Worksheet. The application was approved on April 24, 2007. The director terminated the applicant's temporary resident status on November 28, 2011, finding that the applicant did not submit sufficient evidence to establish that she entered the United States before January 1, 1982 and lived in the United States during the requisite period. The director noted several inconsistencies in the record including identical documents listing the applicant's birth date as June 5, 1971 for the Form I-687 application and June 5, 1976 for the applicant's family unity case.

On appeal, the applicant states that her correct date of birth is June 5, 1971 and that her brother prepared the family unity application. The applicant states that if her brother provided erroneous information regarding her age, it was "out of [her] control."

The status of an alien lawfully admitted for temporary residence under section 245A(a)(1) of the Act may be terminated at any time if it is determined that the alien was ineligible for temporary residence under section 245A of the Act. 8 C.F.R. § 245a.2(u)(1)(i).

Under the CSS/Newman Settlement Agreements, USCIS shall adjudicate each Form I-687 under the provisions of section 245A of the Act, regulations and administrative and judicial precedents which the Immigration and Naturalization Service (INS), now USCIS, followed in adjudicating the Forms I-687 timely filed during the Immigration Reform and Control Act of 1986 (IRCA) application period. *See* CSS/Newman Settlement Agreements.

An applicant who files for temporary resident status pursuant to the CSS/Newman Settlement Agreements 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 through the date of filing the Form I-687 during the original application period or through the date that the applicant attempted to file but was dissuaded from doing so by an agent of the INS. *See id.* and § 245A(a)(2)(A) of the Act.

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 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.

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]

In her handwritten statement, [redacted] states that she has known the applicant since the applicant was 12 years old. [redacted] states that she met the applicant in [redacted] and that the applicant was raised by her aunt [redacted] The AAO notes that although [redacted] provides her own employment and educational history, [redacted] does not provide any

contact information. [redacted] states that she does not want her phone number to be part of the record.

In her affidavit, [redacted] states that the applicant has been in the United States since 1981 and that the applicant lived with her at the time. [redacted] does not provide an address or dates when the applicant lived with her. [redacted] statement is inconsistent with [redacted] statement that the applicant was raised by [redacted]

The AAO also notes that [redacted] and [redacted] statements are also inconsistent with the applicant's Form I-817 signed by the applicant on January 19, 1996 stating that the [redacted] had "100% custody" of her.

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's 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.

In her letter, [redacted] states that the applicant has been her patient from March 15, 1983 to the present. [redacted] also states that the applicant's mother, [redacted] was the responsible person on this account. This is some evidence that the applicant was present in the United States in 1983. The AAO notes that in her letter, [redacted] does not list the dates that she examined the applicant or how frequently she saw the applicant during the requisite period.

The record also contains two letters from the [redacted] on letterhead. In a letter dated October 28, 1990 and signed by [redacted] states that the applicant was enrolled at the [redacted] from September 11, 1981 to June 21, 1984. In a letter dated January 25, 2011 and signed by [redacted] states that the applicant attended the school from September 11, 1981 to June 21, 1984. [redacted] also states that the school does not have transcripts and that the applicant's transcripts "can only be obtained from the middle or high school she attended." The AAO notes that the letterhead lists [redacted] as

[redacted] and not [redacted] In his request for evidence dated January 4, 2011, the director requested a copy of the applicant's transcripts. The applicant did not submit her transcripts. In his decision, the director noted that in her family unity case, the applicant submitted evidence that she attended [redacted] in September 12, 1988. The record contains no school transcripts. Therefore, the letters submitted have little probative value.

The record contains a photocopy of an immunization record listing the applicant's date of birth as June 15, 1971 and indicating that the applicant was vaccinated in 1981, 1982, and 1984. This is some evidence that the applicant was in the United States in 1981, 1982, and 1984. However, as noted by the director in his notice of intent to terminate (NOIT), the applicant also submitted an immunization record listing her year of birth as 1976. The applicant has not submitted evidence indicating that the immunization record submitted is credible. Therefore, the applicant's immunization record has no probative value.

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 AAO notes that the applicant was 10 years old in 1981 and the evidence in the record of proceeding lists three different individuals responsible for the applicant's care and financial support by an adult during this period.

On appeal, the applicant states that her correct date of birth is June 5, 1971 and that her brother prepared the family unity application. The applicant states that if her brother provided erroneous information regarding her age, it was "out of [her] control." The applicant has not submitted any official school transcripts or originals documents indicating that she was present in the United States during the requisite period.

As noted by the director in his NOIT and decision to terminate temporary resident status, the applicant submitted documents with different birth dates for two separate applications. The applicant submitted documents listing her date of birth as June 5, 1976 for her family unity application and June 5, 1971 for the Form I-687 application. On appeal, the applicant has stated that her correct date of birth is June 5, 1971. The record contains birth certificates for both dates of birth. The AAO notes that both birth certificates list the control number [redacted] the [redacted] and the [redacted] It appears that the original birth certificate was changed to list the applicant's year of birth at 1976 for her family unity case. The applicant may also be inadmissible due to fraud or willfully misrepresenting a material fact, seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act. *See* § 212(a)(6)(C)(i) of the Act. These grounds of inadmissibility may be waived, but no purpose would be served here where the applicant has otherwise failed to establish her eligibility for temporary resident status.

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. The director's decision terminating the applicant's temporary status is affirmed.

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