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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: **MAY 04 2012** Office: NATIONAL BENEFITS CENTER



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

The applicant, a native of Mexico who claims to have lived in the United States since 1981, 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 on June 8, 2005. On April 13, 2007, the District Director (director), San Diego, erroneously denied the I-687 application, finding that the applicant abandoned the application, pursuant to 8 C.F.R. § 103.2(b)(13), by failing to respond to the Notice of Intent to Deny (NOID) dated March 6, 2007.¹ Because the director erred in denying the application based on abandonment, on October 12, 2010, the director, National Benefits Center issued a notice advising the applicant of the right to appeal the decision to the AAO.

On March 1, 2012, the AAO withdrew the decision of the director and considered the application on a *de novo* basis, 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).² Based on the evaluation, on March 1, 2012, the AAO issued a Notice of Intent to Deny (NOID), notifying the applicant of its intention to deny her application because the applicant has failed to establish by a preponderance of the evidence that she has resided in the United States in an unlawful status for the duration of the requisite period.

On March 22, 2012, the AAO received the applicant's response to the NOID.

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 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.

² 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).

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.

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.

The issue in this proceeding is whether the evidence submitted by the applicant in response to the NOID is sufficient to establish 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 AAO finds that the applicant has failed to meet this burden.

In the NOID, the AAO notified the applicant that the merchandise receipts dated July 19, 1981, September 3, 1983, November 12, 1985 and December 23, 1985, that she submitted in support of her application, were substantively deficient and inconsistent with the information on the Form I-687. Specifically, the AAO noted that some of the receipts have an incomplete address of the applicant and no official markings to authenticate the dates they were written. Some of the receipts incorrectly listed her address as [REDACTED] which is inconsistent with the address listed by the applicant on the Form I-687. On that form, the applicant did not list any residential address in the United States until 1995.

In response, the applicant stated that she first came to the United States in 1981, with her mother, [REDACTED] when she was 13 years old, and that they traveled to Los Angeles to live with her aunt, [REDACTED] from 1981 to 1985, and thereafter moved to [REDACTED] California. It appears from the applicant's statement in response to the NOID that she was not residing in Escondido, California at the time the receipts were issued. The applicant admitted purchasing the [REDACTED] and products on July 19, 1981, December 23, 1981, September 3, 1983 and November 12, 1985, but did not provide a reasonable explanation why the receipts listed her address as [REDACTED] California.

The AAO also notified the applicant that the affidavits she submitted in support of her application were substantively deficient and inconsistent with information she provided on the Form I-687. In response, the applicant stated that she resided with her aunt, [REDACTED] in Los Angeles, California, from 1981 to 1985. It is noted that the applicant did not list an address in Los Angeles, California as one of her addresses in the United States during the requisite period. It is further noted that the applicant did not provide any documentation to establish that she resided in Los Angeles, California, from 1981 to 1985. [REDACTED] claims that she has personal knowledge that the applicant resided in [REDACTED] San Diego, California, from December 1981 to the present (February 14, 2006), the date she completed the affidavit because they were neighbors. [REDACTED] affidavit is inconsistent with the applicant's statement in response to the NOID. The applicant did not list the [REDACTED] San Diego, address as one of her addresses in the United States and did not mention the [REDACTED] San Diego address in her response to the NOID.

The applicant indicated on the Form I-687 that she was employed by [REDACTED] as a field worker from 1984 to 1987. In her response to the NOID, the applicant stated that she babysat for her aunt, [REDACTED] from 1981 to 1985, and that

she worked with her cousin [REDACTED] cleaning houses from 1987. The applicant did not claim any employment with [REDACTED]

The statement by the applicant in response to the NOID further contradicted the information provided by the applicant on the Form I-687 application and the affidavits she submitted in support of her application. 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 without competent objective evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See id.*

The applicant's response has failed to overcome the evidentiary deficiencies and inconsistencies noted in the NOID. Therefore, upon a *de novo* review of all of the evidence in the record, the AAO finds that the applicant has failed to submit credible evidence to establish that she continuously resided in the United States in an unlawful status for the requisite period. Accordingly, she has not established that she is eligible for the benefit sought. The various statements currently in the record which attempt to substantiate the applicant's residence and employment in the United States during the requisite period are not credible and thus are not probative.

Accordingly, 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.