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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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FILE:

Office: Los Angeles

Date: APR 29 2008

MSC 05 154 11615

IN RE:

Applicant:

PETITION: 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 [or Records] 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.

Robert P. Wiemann, 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 District Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director determined that the applicant had not demonstrated that she had continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that she attempted to file a Form I-687, Application for Status as a Temporary Resident, with the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS) in the original legalization application period between May 5, 1987 to May 4, 1988. Therefore, the district director concluded that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and section 245A of the Immigration and Nationality Act (Act) denied the application.

On appeal, the applicant reiterates her claim of residence in the United States for the requisite period. The applicant claims that the individuals who prepared various applications on her behalf made errors in listing information relating to the date she first entered the United States. The applicant indicates that a brief in support of her appeal would be forthcoming within thirty days. However, as of the date of this decision the applicant has failed to submit a statement, brief, or additional documentation to supplement her appeal. Therefore, the record must be considered complete.

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 Immigration and Nationality Act (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).

For purposes of establishing residence and presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the alien attempted to file a completed Form I-687 application and fee or was caused not to timely file, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. Paragraph 11, page 6 of the CSS Settlement Agreement and paragraph 11, page 10 of the Newman Settlement Agreement.

An alien applying for adjustment of status 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 including affidavits is permitted pursuant to 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 "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.

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 (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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his or her burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on March 3, 2005. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant listed ██████████ in Mendota, California from April 1985 through May 1986 and "██████████" in Anaheim, California from June 1986 to May 1992. Further, at part #33 of the Form I-687 application where applicants were asked to list all employment in the United States since entry, the applicant listed agricultural employment for farm labor contractor ██████████ in Firebaugh, California from May 1985 to May 1986 and self-employed janitorial services and housekeeping in Anaheim, California June 1986 to July 1989. The fact that

the applicant failed to list any residence in the United States prior to April 1985 and any employment in this country prior to May 1985 diminishes the credibility of the applicant's claim of residence in the United States since prior to January 1, 1982.

In support of her claim of continuous residence in the United States since prior to January 1, 1982, the applicant submitted a letter that is signed by [REDACTED]. Ms. [REDACTED] stated that she employed the applicant as a housekeeper and babysitter from January 1982 to December 1988. However, [REDACTED] failed to provide the applicant's address of residence during that period she employed the applicant as required by 8 C.F.R. § 245a.2(d)(3)(i). Further, [REDACTED] failed to provide any testimony relating to the applicant's residence in this country prior to January 1982. More importantly, [REDACTED] testimony that she employed the applicant from January 1982 to December 1988 did not correspond to the applicant's testimony regarding her employment history as the applicant did not list Tilly Levine as an employer at part #33 of the Form I-687 application.

The applicant provided a Form I-705 affidavit and a separate employment affidavit both of which are signed by farm labor contractor [REDACTED]. Mr. [REDACTED] indicated that he employed the applicant for 105 days cultivating tomatoes from May 1, 1985 to May 1, 1986. Nevertheless, [REDACTED] failed to attest to the applicant's residence in the United States from prior to January 1, 1982 up through May 1, 1985 and after May 1, 1986 through the end of the original legalization application period on May 4, 1988.

The applicant included an affidavit that is signed by [REDACTED]. Ms. [REDACTED] stated that as a result of her acquaintance with the applicant she had personal knowledge that the applicant resided in Mendota, California from May 1984 to December 1986 and Santa Ana, California from March 1987 through at least the end of the original legalization application period on May 4, 1988. However, [REDACTED] testimony that the applicant lived in Mendota, California from May 1984 to December 1986 conflicted with the applicant's testimony that she lived in Mendota, California from April 1985 through May 1986 on the Form I-687 application. In addition, [REDACTED] testimony that the applicant lived in Santa Ana, California from March 1987 through at least the end of the original legalization application period on May 4, 1988 directly contradicted the applicant's testimony that she lived in Anaheim, California from June 1986 to May 1992 on the Form I-687 application. Moreover, [REDACTED] failed to provide any testimony relating to the applicant's residence in the United States since prior to January 1, 1982 up to May 1984 and after December 1986 up through March 1987.

The applicant submitted an affidavit signed by [REDACTED] who declared that due to his acquaintance with the applicant he had personal knowledge that she lived in Santa Ana, California from November 1987 through at least the end of the original legalization application period on May 4, 1988. However, [REDACTED] testimony that the applicant lived in Santa Ana, California from November 1987 through at least the end of the original legalization application period on May 4, 1988 directly contradicted the applicant's testimony that she lived in Anaheim, California from June 1986 to May 1992 on the Form I-687 application. Further, [REDACTED] failed to attest to the applicant's residence in the United States from prior to January 1, 1982 up to November 1987.

The record shows that subsequent to the filing of her Form I-687 application, the applicant submitted an affidavit in which she claimed that she resided at [REDACTED] in Anaheim, California from October 1981 through April 1985. Additionally, the applicant asserted that she had been employed by

██████████ and ██████████ as a housekeeper and babysitter from January 1982 to December 1988. However, the applicant failed to provide any explanation as to why she did not list any residence in the United States prior to April 1985 and any employment with ██████████ and ██████████ on the Form I-687 application.

A review of the record revealed that the applicant possesses a separate Administrative file or A-file, ██████████. This A-file contains a Form I-589, Request for Asylum and Withholding of Removal, which had been submitted to the Service on September 24, 2001. The record shows that the applicant subsequently appeared for an interview relating to her Form I-589 asylum application at the Service's Asylum Office in Anaheim, California on October 30, 2001. Notations made by the interviewing officer on the applicant's Form I-589 asylum application demonstrate that the applicant testified under oath that she had attended school in Morelos, Mexico at the JFK Escuela Secundaria from September 1981 to June 1984 and the Escuela Tecnico Laboratorio from September 1984 to June 1987. These notations also reflect that the applicant testified that her only employer in the United States had been World of Jeans and Tops in Irvine, California beginning in 1991. It must be noted that the applicant specifically acknowledged the veracity of this information and the notations made by the interviewing officer by signing Part G of the Form I-589 asylum application at her interview on October 30, 2001.

The file ██████████ also contains a Form EOIR-42B, Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents, which the applicant submitted to the Executive Office of Immigration Review on December 31, 2001. At question #19 of the Form EOIR-42B application where applicants were asked to list the date they first arrived in the United States, the applicant listed August 1989. On the Form G-325A, Record of Biographic Information, which accompanied the Form EOIR-42B application, the applicant indicated that she resided in the city of Cuernavaca, state of Morelos, Mexico from May 1967 to July 1989. The record contains a Form I-703, Record of Action, which reflects that the applicant appeared before an Immigration Judge on November 25, 2003 and acknowledged that she entered the United States in August 1989. The record contains another separate Form I-703, Record of Action, which reflects that the applicant appeared before an Immigration Judge on May 10, 2004 and affirmed once again that she entered this country in August 1989.

The district director determined that the applicant had provided failed to submit sufficient credible evidence establishing her continuous residence in this country since prior to January 1, 1982. The district director further determined that the applicant had seriously undermined her claim of residence in the United States for the requisite period by providing the contradictory testimony cited above relating to critical elements of such claim. The district director concluded that the applicant failed to meet her burden of proof in establishing residence in this country for the period in question, and, therefore, denied the Form I-687 application on June 19, 2007.

On appeal, the applicant reiterates her claim of residence in the United States for the requisite period. The applicant claims that the individual who prepared the Form I-589 asylum application, Form EOIR 42B application, and Form G-325A biographic report on her behalf made errors in listing information relating to the date she first entered the United States. However, the applicant's explanation must be considered as inadequate because she has consistently provided conflicting and

contradictory testimony relating to places and dates of residence, employment history, and educational background in the current proceeding as well as the separate asylum and removal proceedings.

The absence of sufficiently detailed supporting documentation and the applicant's contradictory testimony seriously undermine the credibility of her claim of residence in this country for the requisite period, as well as the credibility of the documents submitted in support of such claim. Pursuant to 8 C.F.R. § 245a.2(d)(3), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. The applicant has failed to submit sufficient credible documentation to meet her burden of proof in establishing that she has resided in the United States since prior to January 1, 1982 to May 4, 1988 by a preponderance of the evidence as required under both 8 C.F.R. § 245a.2(d)(3) and *Matter of E-M-*, 20 I&N Dec. 77 (Comm. 1989).

Given the applicant's reliance upon documents with minimal or no probative value and her own conflicting testimony, 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 as required under section 245A(a)(2) of the Act. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act.

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