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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS2090
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U.S. Citizenship
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[REDACTED]

FILE: [REDACTED] Office: BOSTON Date: APR 21 2009
MSC-05-344-10875

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. 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.


John F. Grissom
Acting 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, Boston. 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 director denied the application, finding that the applicant had not established by a preponderance of the evidence that she had continuously resided in the United States in an unlawful status for the duration of the requisite period. Specifically, the director noted that the applicant testified in her July 11, 2006 interview with United States Citizenship and Immigration Services (USCIS) that she entered the United States with her mother in September 1981 via Boston, Massachusetts and that she was admitted as a B-2, nonimmigrant visitor. The director noted that this entry would have likely been for a six month period, thus causing the applicant to be in legal status on January 1, 1982 and ineligible for adjustment to temporary resident status. The director also noted that the record of proceeding did not contain sufficient credible evidence of the applicant's entry or her continuous residence throughout the relevant period. Accordingly, the application was denied on May 9, 2007.

On appeal, the applicant asserts that she has established her unlawful residence for the requisite time period and that the director erred in assuming that she was in lawful B-2 status on January 1, 1982. The applicant asserts that she was confused at the time of her interview and that she actually entered Canada in 1981 using a Canadian visitor visa. She asserts that she entered the United States via Canada in 1981 without inspection and at no time was she present in the United States in lawful status.

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).

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 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 AAO has conducted a *de novo* review of the record of proceeding. It is noted

that the director indicated in the Notice of Denial (Denial) that the applicant testified that she entered the United States in 1981 using a B-2 nonimmigrant visa. On appeal, the applicant has submitted a statement indicating that she was mistaken at her interview and she actually entered the United States in unlawful status via Canada in 1981. As the applicant has provided two different accounts of her entry, she has seriously undermined the credibility of her testimony. 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). Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the application. *Id.* at 591. In support of her assertion that she entered the United States illegally via Canada, the applicant submitted the following documentation:

- An affidavit from her mother, [REDACTED] who indicates that she entered Canada with her daughter in September 1981 using a visitor visa. She then indicates that they remained in Canada for two weeks before entering the United States without inspection. She provides no evidence, including a copy of her Canadian visa, her passport or any other documentation that would clearly point to where the truth lies.
- An affidavit from [REDACTED] who indicates that he is a Kenyan citizen and that he formerly worked for the Immigration Department of the Government of Kenya and that he issued the applicant and her mother travel documents. He does not indicate how he remembers the dates and destination of the applicant, nor does he provide any additional evidence or information to substantiate his testimony.
- A letter from Gichuru High School in Limuru, Kenya indicating that the applicant left the school in September 1981 to travel to Canada and the United States.
- A Kenya Secondary School Leaving Certificate issued by the Ministry of Education, Science and Technology in Kenya indicating that the applicant left Gichuru High School in September 1981.

None of the evidence cited above provides credible verification that the applicant actually entered Canada in 1981 or that she then entered the United States in unlawful status thereafter. For this reason, the applicant has not sufficiently resolved the inconsistency between her testimony in her interview and her testimony on appeal. As she has not demonstrated by a preponderance of the evidence that she was present in the United States prior to January 1, 1982 in unlawful status, the applicant has not met her burden and the director properly denied the application on those grounds.

However, apart from the grounds cited by the director, the AAO has conducted a *de novo* review of the record of proceeding and determined that the applicant has not met her burden of proving that she continuously resided in the United States during the entire relevant period. Specifically, the applicant has submitted three affidavits in support of her continuous residence, from the following

individuals: [REDACTED], and [REDACTED]. Although the affiants state that they have known the applicant since before January 1, 1982, the statements do not supply enough details to lend credibility to such a relationship with the applicant. For instance, the affiants do not indicate how they date their initial meeting with the applicant, how frequently they had contact with the applicant, or how they had personal knowledge of the applicant's presence in the United States. Given these deficiencies, these affidavits have minimal probative value in supporting the applicant's claims that she entered the United States prior to January 1, 1982 and resided in the United States for the entire requisite period.

Therefore, upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that she is eligible for the benefit sought.

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.