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U. S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

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FILE: [REDACTED] Office: NEW YORK
MSC-06-060-10450

Date: **APR 28 2009**

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.

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 District Director, New York. 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.

On appeal, the applicant addresses the discrepancies her application and evidence. Specifically, the applicant asserts that her passport that expired in 1983 was destroyed in a hurricane; her absence from the United States was for 46 days; and she submitted citizenship documents to prove that her affiants here in the early 1980s and earlier. 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 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 245(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 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

¹ The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n.9 (2d Cir. 1989).

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 (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 documentation that the applicant submits in support of her claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of witness statements; an employment verification letter; an attestation from a church located in New York; and copies of her previous passport. The AAO has reviewed each document in its entirety to determine the applicant's eligibility; however, the AAO will not quote each witness statement in this decision.

The record contains witness statements from [REDACTED]

and [REDACTED]

[REDACTED]. The witness statements 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.

None of the witness statements provide concrete information, specific to the applicant and generated by the asserted associations with her, 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 witness statements. To be considered probative and credible, witness statements must do more than simply state that a witness 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, individually and together, the witness statements do not indicate that their assertions are probably true. Therefore, they have little probative value.

The AAO finds that the witness statements contain the following deficiencies:

- The witness statement from [REDACTED] does not indicate when she first met the applicant in the United States, how she dated this initial meeting, how frequently she had contact with the applicant during the requisite period, and how she had personal knowledge of the applicant's presence in the United States. Further, it does not provide any information regarding where the applicant lived or was employed during the requisite period.
- The witness statement from [REDACTED] details her relationship with the applicant in the United States after the requisite period. As such, it is without any relevance in these proceedings.
- The witness statement from [REDACTED] provides that he assisted the applicant with finding a job and took her to church. However, it does not state where the applicant was employed or her occupation. Nor does it provide the name and location of the church they attended.
- The witness statement from [REDACTED] provides that in 1981 the applicant lived with her at [REDACTED] for a period of time. It states that the applicant then found live-in household employment and stayed at [REDACTED] home during the applicant's days off. However, it does not indicate how long the applicant initially resided with [REDACTED]. Nor does it state where the applicant was employed or her occupation.²
- The witness statement from [REDACTED] states that in 1981 he helped the applicant find live-in jobs. However, it does not provide where the applicant resided during the requisite

² The applicant indicated on her Form I-687 application that she resided at [REDACTED] during the requisite period. The applicant only provided the [REDACTED] address on a subsequent Form I-687 that she used to amend the initial application.

period, where she was employed, or explain her occupation. Nor does it detail the frequency of their contact during the requisite period.

- The witness statements from [REDACTED] and [REDACTED] do not indicate how the witnesses dated their initial meeting with the applicant. Nor do they detail the frequency of their contact with the applicant during the requisite period or their personal knowledge of the applicant's presence in the United States. Further, they do not provide any information regarding where the applicant lived or was employed during the requisite period.
- The witness statement from [REDACTED] provides that he met the applicant in 1981 at a church Sunday school picnic. It states that the applicant has since attended the church picnics nearly every year. However, the statement does not provide the name and location of the church to verify that he first met the applicant in the United States. Nor does the statement provide any details on the frequency his contact with the applicant during the requisite period.

The record contains an attestation from [REDACTED] Pastor of the Triumphant Church of God of Jamaica, Inc., dated February 7, 2006. The attestation provides that [REDACTED] has known the applicant since she first came to the New York in 1981. It states that in early 1982 the applicant worshiped at the [REDACTED]. The attestation provides that the applicant has been attending services at the Triumphant Church of God since 1988. The applicant's membership with the Triumphant Church of God is either outside the requisite period or near the end of the requisite period. Of significance to this proceeding is the applicant's purported involvement with the [REDACTED]. However, the applicant has not provided an attestation from [REDACTED] or indicated the reason an attestation is unavailable. It should further be noted that the applicant failed to note her membership with either Mt. Zion Church or the Triumphant Church of God on her Form I-687 application. The applicant only provided her involvement with these churches on a subsequent Form I-687 that she used to amend the initial application. Notably, the applicant's amended application provides that she was involved with Mt. Zion Church in 1983, which is inconsistent with the date provided by [REDACTED]. Given these deficiencies, this attestation is of little probative value.

The record also contains an employment verification statement from [REDACTED] dated February 1, 2006. The statement provides that she has known the applicant since 1982. It states that the applicant has been her employee for several years. The regulation at 8 C.F.R. § 245a.2(d)(3)(i) provides that letters from employers must include: (A) Alien's address at the time of employment; (B) Exact period employment; (C) Periods of layoff; (D) Duties with the company; (E) Whether or not the information was taken from official company records; and (F) Where the records are located and whether the Service may have access to the records. This attestation fails to comply with the cited regulation because it does not: state the applicant's address at the time of employment; provide her exact period of employment and periods of layoff (if any); describe her duties; and convey whether there are any records related to the applicant's employment. Given these deficiencies, this attestation is of little probative value.

The AAO finds that the applicant has overall failed to provide sufficient detail of her employment during the requisite period. The applicant's Form I-687 initially provided that during the requisite period, she was self-employed as a vendor in Bronx, New York. The applicant later changed this information on her amended Form I-687 application to reflect her occupation as providing childcare at various locations in New York City. However, the applicant failed to indicate exactly where she was employed. This information is relevant because several of the aforementioned witness statements provide that she resided with her employers. The applicant's failure to provide a detailed and consistent employment history undermines the credibility of her claim of residence in the United States during the requisite period.

The AAO finds further that the record contains inconsistencies regarding the applicant's absences from the United States. The applicant's Form I-687 initially provided that she was absent during the requisite period from December 1986 to February 1987. On the applicant's amended Form I-687 application she indicated that she had no absences from the United States during the requisite period. However, the record contains a copy of the applicant's previous passport, which shows that it was issued in Jamaica on March 21, 1983. The passport also contains an "application received" stamp from the United States Embassy in Kingston, Jamaica, dated April 29, 1986. The passport, therefore, indicates that the applicant was in Jamaica in March 1983 and April 1986. The contradictions are material to the applicant's claim in that they have a direct bearing on the applicant's residence in the United States during the requisite period. The AAO finds that the applicant failed to provide a reasonable explanation or additional evidence to resolve the contradictions. 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).

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.