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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

41

FILE:

MSC-06-091-13544

Office: LOS ANGELES

Date:

**APR 30 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.

A handwritten signature in black ink, appearing to read "John F. Grissom".

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, Los Angeles. 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 after determining 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. The director denied the application, finding that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, the applicant asserts that since she worked from 1981 to 1987 in an undocumented worker status, she does not have any tax records or receipts because all of her bills were paid in cash. The applicant submits declarations on appeal.

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. See 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).

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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet 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 applicant submitted copies of color photographs that are not identifiable or verifiable by date.

The applicant submitted the following attestations:

- An affidavit from [REDACTED] and [REDACTED] in which they stated that they met the applicant in 1980 when she first entered the United States. They further stated that the applicant resided with them at [REDACTED] in Van Nuys, California for four years (1984), upon entering the United States. The affiants submitted rent receipts for the premises noted above, bearing the applicant’s name as tenant and dated: December 24, 1980, October 24, 1982, August 24, 1983, December 24, 1984, February 24, 1985, May 24, 1986, September 24, 1988, and January 24, 1989. Here, the affiant’s statements are contradictory to the rent receipts in that the rent receipts were made out to the applicant for years subsequent to her alleged residency. It is also noted that the rent receipts are inconsistent with statements made by

the applicant on her Form I-687 and during her immigration interview where she testified under penalty of perjury that she resided at the above noted address from 1980 to 1984. These unresolved inconsistencies and contradictions cast doubt on the applicant's proof. 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. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

- An affidavit from [REDACTED] in which she stated that she has known the applicant to be in the United States since 1980 and that the applicant lived in her home from 1980 to 1984. She also stated that she married the applicant's brother-in-law. This statement is inconsistent with the statements made by the applicant, [REDACTED], and [REDACTED]. It is also inconsistent with the evidence submitted by the [REDACTED] as noted above.
- An affidavit from [REDACTED] and [REDACTED] in which they stated that the applicant has been living in the United States since 1984 and that she was dating their nephew [REDACTED]. They further stated that the applicant and her husband [REDACTED] lived with them at [REDACTED] in West Hills, California from 1987 to 1991. This statement is inconsistent with the rent receipts submitted by [REDACTED] and [REDACTED].
- Fill-in-the-blank affidavits from [REDACTED] and [REDACTED] in which they each stated that he met the applicant through relatives and friends. [REDACTED] listed the applicant's addresses as [REDACTED] in Van Nuys, California from 1981 to 1984; [REDACTED] in Carson, California from 1984 to 1986; and [REDACTED] in West Hills, California from 1987 to 1991. [REDACTED] affidavit is inconsistent with [REDACTED] affidavit in that he states that the applicant lived at the [REDACTED] address from 1986 to 1987. The affiants fail to specify when they met the applicant or that their listing of the applicant's addresses is based upon their first-hand knowledge of her whereabouts and the circumstance of her residency during the requisite period.

The applicant submitted the following attestations:

- Affidavits from [REDACTED] and [REDACTED] in which they stated that they have known the applicant to be present in the United States since 1981 and that the applicant is [REDACTED] cousin. They also stated that their knowledge is based upon the fact that the applicant would call [REDACTED] in Mexico and that they continued to communicate with each other after the [REDACTED] entry into the United States.

- An affidavit from [REDACTED] in which he stated that he has known the applicant to be in the United States since 1980 and that they are childhood friends. He further stated that he knows of the applicant's presence in the United States because she would frequently phone her family in Mexico. He also stated that they began to meet with each other after he arrived in the United States.
- An affidavit from [REDACTED] in which he stated that he has known the applicant to be present in the United States since 1981, that they were childhood friends, and that since the applicant arrived in the United States they have visited with each other.

Although these affiants claim to have known the applicant to be present in the United States prior to January 1, 1982, there is no evidence to demonstrate that their statements are based upon their first-hand knowledge of the applicant's whereabouts or circumstances of her residency during the requisite period. [REDACTED] and [REDACTED] and [REDACTED] admit to residing in Mexico at the time the applicant entered the United States but have failed to specify when it is that they arrived in the United States from Mexico. [REDACTED] does not indicate when he came to the United States and does not describe the frequency of his contact with the applicant or the occasions for their visits in the United States.

The applicant submitted the following attestations:

- A declaration from [REDACTED] in which he stated that he has known the applicant since 1983 when she was dating his brother [REDACTED]
- Affidavits from [REDACTED], and [REDACTED] in which they stated that they have known the applicant since 1984.
- An affidavit from [REDACTED] in which he stated that he has known of the applicant's presence in the United States since 1985 and that he met the applicant through [REDACTED] who was his girlfriend at the time.
- An affidavit from [REDACTED], and [REDACTED] in which they stated that they employed the applicant in the city of Arleta, California as a housekeeper from 1987 to 1990.

Here, the affidavits are lacking in detail. The affiants fail to specify the applicant's place of residence or the circumstances of her residency in the United States during the requisite period. It is also noted that [REDACTED] and [REDACTED] fail to specify the number of hours or days the applicant worked for them. The affidavits do not conform to regulatory standards for attestations by employers. Specifically, the affidavits do not specify the applicant's address during the employment period or whether the employment information was taken from company records. Neither has the availability of the company records for inspection been clarified. 8 C.F.R. § 245a.2(d)(3)(i).

None of the affiants claim to have known the applicant to be present in the United States since prior to January 1, 1982.

The director determined that the applicant failed to establish her eligibility for the immigration benefit sought.

On appeal, the applicant reasserts her claim of eligibility for temporary resident status.

The applicant submits the following attestations:

- A declaration from [REDACTED] in which she states that she has known the applicant since 1981 and that the applicant has been working as a housekeeper for a long time.
- A declaration from [REDACTED] in which he states that he has known the applicant to be present in the United States since 1984 and that she worked for him as a housekeeper from 1984 to 1986.

The declarants fail to specify the applicant's place of residence during the requisite period. They also fail to specify where the applicant was employed as a housekeeper. The affidavits do not conform to regulatory standards for employers. [REDACTED] letter does not conform to regulatory standards for attestations by employers in that it does not specify the applicant's address during the employment period or whether the employment information was taken from company records. Neither has the availability of the company records for inspection been clarified. 8 C.F.R. § 245a.2(d)(3)(i). Declarant [REDACTED] fails to specify where and under what circumstances she met the applicant.

The AAO finds that, upon an examination of each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, the applicant has not shown by a preponderance of the evidence that she continuously resided in the United States for the requisite period. She has failed to overcome the director's basis for denial. The attestations and other evidence submitted are inconsistent with statements made by the applicant and are lacking in detail and probative value.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of this claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the applicant's reliance upon evidence that is inconsistent with her statements, and that is lacking in detail and probative value, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States for the requisite period 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.