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20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
and Immigration
Services

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FILE:

MSC-06-004-13466

Office: NEW YORK

Date:

FEB 11 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 asserts that she has established her continuous unlawful residence for the requisite time period.

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 director denied the application because the applicant had an absence from the United States that constitutes a break in her requisite period of continuous residence. According to 8 C.F.R. § 245a.2(h)(1), an applicant for temporary resident status shall be regarded as having resided continuously in the United States if, at the time of filing of the application, no single absence from the United States has exceeded 45 days, and the aggregate of all absences has not exceeded 180 days between January 1, 1982 through the date the application for temporary resident status is filed, unless the applicant can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed. The issue in this proceeding is whether the applicant's residence in the United States during the requisite period was continuous.

The record reflects that during the applicant's interview for temporary resident status, she signed a sworn statement that provides she was absent from the United States from July 28, 1986 to February 10, 1987, a period of 197 days. The applicant asserts on appeal that she was, in fact, absent from the United States for only 43 days, from December 28, 1986 to February 10, 1987. This assertion is corroborated in a copy of the applicant's prior Form I-687 that she furnished as evidence. However,

the applicant also furnished as evidence a copy of her affidavit for a determination of LULAC class membership, which provides that she was absent from the United States for a period of 53 days, from December 28, 1986 to February 20, 1987. The numerous inconsistencies in the record regarding the applicant's absence from the United States cast doubt upon the credibility of her claim of having continuously resided in the United States for the requisite period. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Id.*

The documentation that the applicant submits in support of her claim to have continuously lived in an unlawful status during the requisite period consists of several affidavits and letters of relationship from friends and a letter from a representative of the Bangladesh Society of New York. 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 of proceeding contains three identical affidavits from [REDACTED] and [REDACTED]. Although the affiants state that they have known the applicant since before January 1, 1982, and have knowledge of her absence from the United States from December 28, 1986 to February 10, 1986, the statements do not supply enough details to lend credibility to an at least 26-year 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, how they had personal knowledge of the applicant's continuous residence in the United States, or where the applicant lived during the requisite period. Moreover, the affiants do not provide any details on their personal knowledge of the applicant's absence from December 28, 1986 to February 10, 1986. To be considered probative and credible, witness statements must do more than simply state that an author 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. Given these deficiencies, these affidavits have minimal probative value in supporting the applicant's claims that she has continuously resided in the United States for the entire requisite period.

The record contains a letter from [REDACTED] New York. The regulation at 8 C.F.R. § 245a.2(d)(3)(v) provides requirements for attestations made on behalf of an applicant by churches, unions, or other organizations. Attestations must: (1) Identify applicant by name; (2) be signed by an official (whose title is shown); (3) show inclusive dates of membership; (4) state the address where applicant resided during membership period; (5) include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; (6) establish how the author knows the applicant; and (7) establish the origin of the information being attested to. This letter fails to

comply with the aforementioned regulation because it does not: show the applicant's inclusive dates of membership; state the address(es) where the applicant resided during her membership period; and establish in detail that the author knows the applicant and has personal knowledge of the applicant's whereabouts during the requisite period. Since the letter does not provide the applicant's dates of membership with the Bangladesh Society, it is not deemed probative and is without any evidentiary value.

The record contains statements from [REDACTED] and [REDACTED]. These statements provide that the authors have known the applicant throughout the requisite period and attest to the applicant being physically present in the United States during the required period. However, the statements fail to provide any 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 statements. For instance, the authors do not indicate how they date their initial meeting with the applicant, how frequently they had contact with the applicant, how they had personal knowledge of the applicant's continuous residence in the United States, or where the applicant lived during the requisite period. Moreover, the statements fail to provide the applicant's dates of absence from the United States, or any information on their personal knowledge of her absence. Upon review, the AAO finds that, individually and together, the witness statements do not indicate that their assertions are probably true. Given these deficiencies, these statements have minimal probative value in supporting the applicant's claims that she has continuously resided in the United States for the entire requisite period.

The record contains additional affidavits from [REDACTED] and [REDACTED]. The affidavits provide that the affiants have known the applicant since 1981 after meeting her at a restaurant in Brooklyn, New York. These affidavits 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.

The affidavit from [REDACTED] provides that the applicant was employed in a restaurant in Jackson Heights that he frequented for breakfast or lunch. However, the applicant showed on her current Form I-687 application that she has only been self employed in odd jobs during the requisite period. Similarly, the applicant showed on her prior Form I-687 that she has only been employed in babysitting, housekeeping, and she described her occupation as "odd job." This inconsistency casts doubt upon [REDACTED] assertions of having personal knowledge of the applicant's residence in the United States during the requisite period. Moreover, his statement does not provide any details on the applicant's residence in the United States. For instance, the statement does not provide the name of the restaurant in Jackson Heights where [REDACTED] purportedly first met the applicant, where the applicant resided during the requisite period, and

whether she had any absences from the United States. Given these deficiencies, this affidavit is without any probative value in supporting the applicant's claims that she has continuously resided in the United States for the entire requisite period.

The affidavit from [REDACTED] provides that the longest period during which he has not seen the applicant is when she visited her family in Bangladesh from December 28, 1986 to February 20, 1987. [REDACTED] assertion that the applicant was absent from the United States for 53 days (December 28, 1986 to February 20, 1987) contradicts the applicant's assertion that she was absent for only 43 days (December 28, 1986 to February 10, 1987). This contradictory information casts even further doubt upon the applicant's claims that she was absent from the United States for only 43 days.

Finally, the applicant furnished, on appeal, an affidavit from [REDACTED], which provides that he has known the applicant since 1981. [REDACTED] indicates in his affidavit that the applicant visited Bangladesh and then returned to the United States to meet with him on February 11, 1987 at her home. However, the affidavit does not supply enough details to lend credibility to [REDACTED]'s assertions. [REDACTED] states that the applicant returned to the United States to meet with him, but he does not relay the purpose of their meeting, the location of the applicant's home, how he was able to date this particular meeting, or any other memorable details regarding their meeting. Furthermore, this affidavit fails to establish [REDACTED]'s relationship with the applicant. For instance, the affidavit does not explain how he first met the applicant, how frequently he had contact with the applicant, whether he had personal knowledge of the applicant's continuous residence in the United States, or where the applicant lived during the requisite period. Given these deficiencies, this affidavit is of minimal probative value in supporting the applicant's claims that she has continuously resided in the United States for the entire requisite period.

As stated, it is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Id.* Based on the foregoing, the AAO finds that the applicant's documentary evidence fails to reconcile the inconsistencies in the record regarding her absence from the United States. The applicant's documentary evidence individually and in the totality lacks sufficient detail, and therefore, is of little probative value. The applicant has not furnished any competent objective evidence to establish that her absence from the United States did not exceed 45 days. Therefore, the AAO affirms the basis for the director's denial, and finds that pursuant to 8 C.F.R. § 245a.2(h)(1), the applicant's absence from the United States is a break in continuous residence that renders her ineligible for temporary resident status under section 245A of the Act.

Beyond the decision of the director, the AAO finds under its *de novo* review that even if the applicant had established that her absence from the United States did not exceed 45 days, she

would nevertheless still be ineligible for the benefit sought.¹ The applicant has not furnished any probative, reliable, and credible evidence of her entry into the United States before January 1, 1982 and continuous residence in the United States in an unlawful status for the requisite period of time. The applicant's evidence consists of witness statements, which fail to 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 affidavits. Consequently, 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 for this additional basis.

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

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).