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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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FILE:

MSC-06-100-10583

Office: HOUSTON

Date:

JAN 26 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:

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, Houston and 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 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 or had been continuously physically present in the United States for the duration of the requisite period. The director noted that concerning the affidavits submitted, the affiants either contradicted their statements when contacted by the United States Citizenship and Immigration Services (USCIS) officers or their statements were not amenable to verification. The director denied the application, finding that the applicant had not met her burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, counsel asserts that the affidavits submitted are credible and amenable to verification and that the record contains sufficient documentation to establish the applicant's eligibility for temporary resident status. Counsel also asserts that the applicant has stated that [REDACTED] has stated that she has never been contacted by any immigration officer. The applicant does not submit any evidence 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 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).

An alien shall be regarded as having resided continuously in the United States if at the time of filing an application for temporary resident status, no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, through the date the application is filed, unless the alien can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the alien was maintaining residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.15(c)(1).

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 his 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 Supplement to United States Citizenship and Immigration Services (USCIS) on January 8, 2006.

The applicant submitted the following affidavits:

- An affidavit dated October 13, 2006 from [REDACTED] in which she stated that she has known the applicant for fifteen years, since the applicant moved to Texas in 1981. A second affidavit from [REDACTED] dated January 12, 2007 in which she stated that she met the applicant when the applicant was 12 years old and that she met her at the applicant's sister's house in Houston, Texas in 1981. She further stated that she and the applicant have remained good friends through the years. Here, the affiant fails to specify the frequency with which she saw and communicated with the applicant during the requisite period. The affiant also fails to demonstrate first-hand knowledge of the applicant's entry into the United States or her whereabouts and circumstances of her residency during the requisite period. The director noted that the affiant was contacted by a USCIS officer and that the officer was told that the affiant has known the applicant since 1992, and that she was not sure how long the applicant had resided in the United States.
- Affidavits dated October 13, 2006 and January 16, 2007 from [REDACTED] in which she stated that the applicant was born in Mexico and that to her knowledge, the applicant has resided in the United States since November 1981. The affiant fails to demonstrate first-hand knowledge of the applicant's entry into or whereabouts in the United States during the requisite period. She fails to specify the applicant's place of residence and the frequency with which she saw and communicated with the applicant during the requisite period. The director noted that the affiant was contacted by a USCIS officer on or about April 2, 2007, and that at that time she stated that she met the applicant and her family in Mexico 8 to 12 years ago and that she did not know the applicant during the requisite period.
- Affidavits dated October 15, 2006 and January 15, 2007 from [REDACTED] in which she stated that she has known the applicant since December of 1981 and that they met at a Christmas party. She also stated that they have become good friends over the years. Here, the affiant fails to specify the frequency with which she saw and communicated with the applicant during the requisite period. She also fails to demonstrate first-hand knowledge of the applicant's entry into the United States or her whereabouts and circumstances of her residency during the requisite period. The director noted that the affiant was contacted by a USCIS officer on or about December 12, 2006, and that at that time the affiant stated that she has known the applicant since 1986 or 1987, and that she thinks the applicant moved to the United States in 1986 or 1987.
- Affidavits dated October 15, 2006 and January 15, 2007 from [REDACTED] in which she stated that she has known the applicant since 1981 and that she met the applicant through a mutual friend. Here, the affiant fails to specify the frequency with which she saw and communicated with the applicant during the requisite period. She

also fails to demonstrate first-hand knowledge of the applicant's entry into the United States or her whereabouts and circumstances of her residency during the requisite period.

- An affidavit dated January 17, 2007 from [REDACTED] in which she stated that she is the applicant's sister and that the applicant came to live with her at [REDACTED] in Houston, Texas when she arrived in the United States in November of 1981. She further stated that the applicant resided with her until October of 1989 and that she has seen the applicant every other week since she has lived in the United States. Here, the affiant's statements are inconsistent with what the applicant stated on her Form I-687 application at part #30 where she indicated that she resided at the above noted address until **September 1987. There has been no explanation given for this inconsistency.** It is further noted that the affiant has failed to provide documentary evidence to substantiate her claim. The director noted that neither the statements made by [REDACTED] or [REDACTED] were amenable to verification, although attempts were made to contact the affiants.

In denying the application the director noted that the affidavits submitted were either not amenable to verification or were inconsistent.

On appeal, counsel reasserts the applicant's claim of eligibility for temporary residence status. The applicant does not submit any new evidence.

In the instant case, the applicant has failed to provide sufficient, probative evidence to establish her continuous unlawful residence in the United States since prior to January 1, 1982, and throughout the requisite period. She has failed to overcome the issues raised by the director. There is insufficient evidence in the record of proceeding to demonstrate the reliability of the affidavits submitted. The applicant has failed to provide an explanation for the inconsistencies found in the record of proceeding relating to her residency in the United States. 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).

Although the applicant claims to have resided in the United States since she was 12 years old, she provided neither school records nor medical or immunization records to substantiate such claim.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, and the inconsistencies in the evidence discussed above 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 documents that are lacking in probative value and are contradictory in nature, 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.