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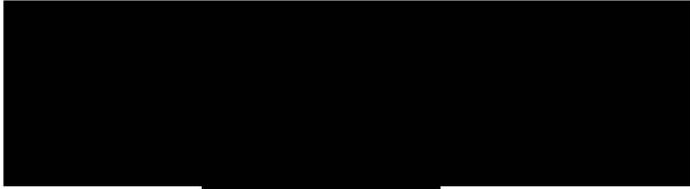
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



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FILE: [REDACTED] Office: JACKSONVILLE
[REDACTED] - consolidated herein]
XPS 80 507 08784
[REDACTED] - APPEAL

Date: **JUL 01 2009**

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: 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 director in Jacksonville, Florida. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant a native of Colombia who claims to have lived in the United States since June 1980, submitted a Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (Act), and an Affidavit For Determination of Class Membership in League of United Latin American Citizens v. INS (LULAC) on April 30, 1991. On September 26, 2006, the applicant was interviewed regarding her application. On February 17, 2007, the director denied the application, finding that the applicant had not provided sufficient credible evidence to establish by a preponderance of the evidence that she entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status for the duration of the requisite period.

On appeal the applicant asserts that the director did not properly evaluate the evidence she submitted in support of her application. In the applicant's view, the evidence of record is sufficient to establish her claim. The applicant submitted additional documentation as evidence of her continuous residence in the United States during the requisite 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 AAO notes that some of the documentation in the record shows that the applicant may have resided in the United States for part of the requisite period – from 1985 onwards. The AAO determines that the applicant has established her continuous residence in the United States from April 1985 through the date of filing the application, based on the following documentation:

- A copy of a Certification of Marriage Registration, issued by the City of New York, showing that the applicant was married to [REDACTED] in Kew Gardens, New York on September 16, 1985.

A copy of a Form I-130, Petition to Classify Status of Alien Relative For Issuance of Immigrant Visa, filed by [REDACTED] on the applicant's behalf on August 28, 1986. On that form, the petition indicated that the applicant entered the United States on April 30, 1985.

- A copy of a Form I-171, Notice of Approval of Relative Immigrant Visa, from the United States Department of Justice, INS, indicating that a relative visa petition filed in New York by [REDACTED] on behalf of the applicant was approved on November 24, 1986.

Copies of earnings statements and other work-related documentation from employers for the years 1985-1989, copies of hospital and medical bills dated in 1986 and 1987, as well as a savings passbook from [REDACTED] Federal Savings and Loan Association showing that the applicant had an account with the Savings and Loan Association from November 1985.

None of this documentation, however, dates before April 1985. Thus, they do not establish that the applicant was residing in the United States during the period from before January 1, 1982 through the spring of 1985. The question remains, however, as to whether the evidence of record establishes the applicant's continuous residence in the United States from before January 1, 1982 through April 1985.

As evidence of his residence in the United States before April 1985, the applicant has submitted the following documentation:

A handwritten statement from St. Michael the Archangel Church in Miami, Florida, dated November 29, 1990, stating that the applicant was a parishioner of the church in "1980-1981."

- A letter from [REDACTED], of Church of St. Bartholomew in Elmhurst, New York, dated December 11, 2006, stating that the applicant attended religious services regularly in the parish from 1982 until 1985.
- Letters from [REDACTED] and [REDACTED] stating that the applicant was employed as a house cleaning from November 1980 through August 1981 and from November 1980 through October 1982, respectively.

A series of letters and affidavits from individuals who claim to have rented a room to, or otherwise known the applicant during the 1980s.

The AAO has reviewed each document in its entirety to determine the applicant's eligibility.

The letters from St. Michael the Archangel Church and from [REDACTED] of Church of St. Bartholomew, do not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(v), which specifies that attestations by religious and related organizations (A) identify the applicant by name, (B) be signed by an official (whose title is shown), (C) show inclusive dates of membership, (D) state the address where the applicant resided during the membership period, (E) include the organization seal impressed on the letter or the letterhead of the organization, (F) establish how the author knows the applicant, and (G) establish the origin of

the information about the applicant. The letters merely indicated the periods the applicant attended religious services at the parishes but did not indicate whether the applicant was a member of any of the parishes and the precise dates of membership. The letters did not indicate where the applicant lived during the periods she attended the churches. Nor did the letters indicate how and when the authors met the applicant, and whether their information about the applicant was based on personal knowledge, churches records, or hearsay. In addition, the letter from St. Michael the Archangel Church did not identify the signatory or title of the person who authored the letter. The letter from [REDACTED] of Church of St. Bartholomew incorrectly stated that the applicant formerly resided at [REDACTED] in Elmhurst, New York, however, the applicant did not indicate the Elmhurst address as any of her addresses in the United States during the 1980s or at any other time. Since the letters did not comply with sub-parts (B), (C), (D), (F), and (G) of 8 C.F.R. § 245a.2(d)(3)(v), and the questionable credibility of the letters, the AAO concludes that the letters have little probative value. They are not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through the date of filing application.

The letters and affidavits in the record from individuals who claim to have employed, rented a room to or otherwise known the applicant during the 1980s have minimalist format. Considering the length of time they claim to have known the applicant – in most cases since 1981- the affiants provided very few details about the applicant's life in the United States and their interactions with her over the years. Most of the affiant did not express personal knowledge of when the applicant first entered the United States, but rather repeated what the applicant told them about her initial entry into the United States. The affidavits are not accompanied by any documentary evidence – such as photographs, letters, and the like – demonstrating the affiants' personal relationships with the applicant in the United States during the 1980s, especially with the two affiants who claim they were the applicant's sisters. Only a few of the affiants provided evidence of their own identities and residence in the United States during the 1980s. For the reasons discussed above, the affidavits have little probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.

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 he is eligible for the benefit sought.

Therefore, based upon the foregoing analysis of the evidence, the AAO concludes that 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.