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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  
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[Redacted]

FILE: [Redacted]  
MSC-05-012-10464

Office: LOS ANGELES

Date:

**JUL 10 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:

[Redacted]

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 if your case was 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, or *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, 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 Immigration and Nationality Act (Act), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet to United States Citizenship and Immigration Services (USCIS). The director found that the applicant had failed to meet her burden of proving by a preponderance of the evidence that she entered the United States before January 1, 1982 and had resided continuously in the United States since that date and throughout the entire requisite period. Specifically, the director denied the application because the applicant had made a sworn statement before a border patrol agent on December 11, 1986 in which she stated that she first came to the United States on or about March 21, 1985 illegally through Mexico. Further, the director noted that the applicant had failed to submit credible evidence to establish her continuous residence in the United States for the duration of the requisite period.

On appeal, counsel for the applicant asserts that the applicant has resided continuously in the United States since before January 1, 1982 and throughout the requisite period. Counsel also claims that the applicant has submitted sufficient credible evidence to support her assertions. Regarding the statement made on December 11, 1986, the applicant states in her declaration that she lied about her arrival in the United States on March 21, 1985 because her employer at that time, [REDACTED] advised her to misstate the facts about her entry in 1981. According to the applicant, [REDACTED] thought he would not be detained or accused of being involved with smuggling an immigrant into the United States if the applicant indicated she first came to the United States in 1985, not 1981. Further, he believed he would have to pay a smaller fine if the applicant stated she arrived in 1985. Whatever the reasons, counsel indicates in his brief that the applicant is not inadmissible since she did not misstate the facts about her entry into the United States in 1985 to gain any immigration benefits.

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)(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 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. 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.

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 (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 proving by a preponderance of the evidence that she entered the United States before January 1, 1982 and had since that date resided continuously in the United States through the date she filed or attempted to file the application for temporary resident status.

At her interview with a United States Citizenship and Immigration Service (USCIS) officer on June 22, 2005, the applicant stated that she first entered the United States in November 1981 without inspection through Mexico. Further, she asserted that, other than an absence from the United States for about two weeks from December 13, 1986 to January 1987, she had resided and worked continuously in the United States throughout the entire requisite period. The applicant offers numerous contemporaneous documents including a photocopy of a parcel post customs declaration dated December 1981; a few letters sent to her mother in Guatemala between 1981 and 1988; some original envelopes with stamps and postmarks; several photos claimed to be taken in Laredo, Texas,

in 1983, 1984, and 1987; and a receipt from Guatemala Consulate General in Houston, Texas, dated August 19, 1986.

During the adjudication of the appeal, the AAO observed that all of the letters addressed to the applicant's mother in Guatemala were not translated into English. The AAO sent a letter on April 24, 2009 requesting that the applicant translate these letters into English, provide an affidavit of support, and submit additional evidence to prove that her absence from the United States in December 1986 was not for more than 45 days. On May 27, 2009 the AAO received the English translation of the letters, the affidavit of support, and a letter from her daughter.

Upon review, the AAO finds that most of the contemporaneous documents noted above are relevant, probative, and credible as evidence of the applicant's presence in the United States during some parts of the requisite period. The letter to the applicant's mother dated November 20, 1981 and the photocopy of the parcel post customs declaration tend to establish the applicant's presence in the United States in November and December 1981. The letter to the applicant's mother dated May 12, 1984 and the envelopes with 1985 and 1986 stamps and postmarks are probative as evidence of the applicant's residence or presence in the United States between 1984 and 1986. The 1986 receipt from Guatemala Consulate General in Houston, Texas and the applicant's sworn statement dated December 11, 1986 tend to show that the applicant left the United States in December 13, 1986. The remaining letters to the applicant's mother and all of the envelopes with stamps and postmarks tend to show that the applicant continuously resided in the United States from February 1987 to January 1989. Viewed individually and within the totality of the evidence, the evidence in the record presents a consistent and credible account of the applicant's residence in the United States during these periods, but it does not establish that the applicant resided in the United States continuously since before January 1, 1982 and throughout the requisite period.

The photos reveal no information about the whereabouts of the applicant. The applicant does not appear on any of the photos submitted. The applicant further fails to name the people shown on the photos or explain how she obtained them. The photos by themselves are neither credible nor probative as evidence that the applicant resided continuously in the United States during the requisite period.

The letter from [REDACTED] the applicant's daughter, does not establish that the applicant left the United States on December 13, 1986 and returned two weeks thereafter. The author fails to describe with sufficient detail how she remembers when or how long her mother visited her in Guatemala in December 1986.

The applicant also submitted three affidavits to establish her continuous residence in the United States throughout the requisite period. [REDACTED] simply claims in her affidavit that the applicant lived with her family at [REDACTED], from November 1981 to 1988. This claim, however, is inconsistent with the evidence of record. It is also significantly different from the applicant's declaration and testimony during the interview. Based on the contemporaneous documents submitted, the applicant did not reside at [REDACTED] until around June 1986. The record also contains a photocopy of an affidavit from [REDACTED] in which she states that the applicant lived with her family in Laredo, Texas, from February 1981 to November 1988.

Additionally, neither [REDACTED] nor her husband has ever claimed or indicated that she or her husband hired the applicant to work as a housekeeper from 1981 to 1988. The applicant also failed to list her employment with the [REDACTED]s on her Form I-687. 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. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the application. *Id.* at 591. No evidence has been submitted or explanation provided to resolve the inconsistencies noted in the record, casting doubt on the veracity of [REDACTED] claim that the applicant resided with her family from February or November 1981 to November 1988.

[REDACTED] states in her affidavit that she first met the applicant at a local church in Arlington, Texas and that the applicant occasionally cleaned and watched her house beginning in November 1981 through 1984. Her affidavit does not establish the applicant's continuous residence in the United States throughout the requisite period, however. [REDACTED] fails to state with sufficient detail the events and circumstances of how she first met the applicant, how she dates her acquaintance with the applicant, and where the applicant resided during the period specified in her affidavit. Moreover, the applicant's Form I-687 lists no employment with [REDACTED]. Nor did the applicant mention any employment with [REDACTED] during her interview. **The lack of detail in the affidavit coupled with the applicant's failure to list or mention her employment with [REDACTED] is significant, considering that [REDACTED] claims to have known the applicant since 1981 and have employed her for about three years.**

[REDACTED] claims in her affidavit that she met the applicant in Nuevo Laredo, Mexico, while she was on vacation in October 1981. [REDACTED] states further that she gave her telephone number after the applicant expressed her desire to come to the United States. According to Ms. [REDACTED] the applicant called her from Laredo, Texas, a month after their first encounter in Mexico. [REDACTED] also states that she and the applicant stayed in contact through telephone during the requisite period. Her affidavit is not probative as evidence of the applicant's continuous residence in the United States throughout the requisite period, however. The affiant does not describe with sufficient detail where the applicant resided in the United States during the requisite period, how often the applicant called, and where the applicant called from. **The lack of detail regarding the applicant's whereabouts during the requisite period is significant given the affiant's claim to have a friendship with the applicant since 1981. Further damaging the credibility of [REDACTED] is her statement that she visited the applicant at [REDACTED] Canoga Park, California, between November 1988 and December 1989. The applicant, based on the contemporaneous documents submitted and her Form I-687, lived in Laredo, Texas in 1988 and 1989. The inconsistencies between [REDACTED] statement and the evidence of record materially affect the affiant's credibility and her claim that she has known the applicant since 1981.**

Further undermining the credibility of the applicant is her sworn statement to the border patrol agent on December 11, 1986 in which she stated that she first came to the United States on March 21, 1985. While the AAO is convinced that the statement in this case was not made to gain any immigration benefits and did not change the facts that the applicant was probably residing in the United States during some parts of the requisite period, her statement when combined with the inconsistencies in the record concerning where she lived and worked between November 1981 and 1988 seriously

damages her credibility and her claim that she resided and worked continuously in the United States during the entire requisite period.

The absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period and lack of detail as well as inconsistencies noted in the record, seriously detract from the credibility of her 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 lack of credible supporting documentation and inconsistencies in the record, it is concluded that the applicant has failed to establish by a preponderance of the evidence that she has 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.