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Office of Administrative Appeals MS 2090
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[Redacted]

FILE: [Redacted]
MSC-06 004 16423

Office: LOS ANGELES

Date: **JUL 23 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 Los Angeles, California. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a native of Mexico who claims to have lived in the United States since March 1980, 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 on October 4, 2005. 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 reasserts her claim that she entered the United States before January 1, 1982 and resided continuously in the country through the requisite period. The applicant submits copies of documents previously submitted in the record.

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 issue in this proceeding is whether the applicant (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. The AAO determines that the applicant has not met her burden.

The record reflects that the applicant provided conflicting information and documentation regarding her initial entry into the United States and her continuous residence in the country through the requisite period. At her interview on November 1, 2006, the applicant testified under oath that she entered the United States in March 1980 without inspection. The applicant did not provide any objective evidence to establish the entry in March 1980. The applicant however, submitted letters and affidavits from family and friends attesting that she entered the United States in 1980. In fact the applicant submitted a notarized letter from her brother [REDACTED] stating that the applicant resided with him at his residence at [REDACTED] Los Angeles, California from 1980 to 1984. The applicant also submitted a photocopy of a

California Identity Card allegedly issued to the applicant on June 9, 1982, listing the applicant's address as [REDACTED] Los Angeles, California. On appeal, however, the applicant contradictorily stated that she entered the United States in 1981, that she was very nervous during her interview and provided the incorrect entry date of 1980. The contradictory statements by the applicant calls into serious question the veracity of her claim that she entered the United States before January 1, 1982 and resided continuously in the country through the requisite period, and also casts serious doubt on the credibility and reliability of the letters and affidavits as well as the copy of the California Identity Card the applicant submitted in support of her claim.

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 without competent objective evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See id.*

The record includes a copy of W-2 Wage and Tax Statement for the year 1983. This document does not appear to be genuine because it did not provide the applicant's address and is contrary to the employment information provided by the applicant as well as the letters and affidavits by individuals who claim to have employed the applicant as a babysitter during the same period. On the Form I-687 the applicant filed in October 2005, she indicated her employment during the same period as babysitting for [REDACTED]. The applicant did not list [REDACTED] as one of her employers during the 1980s or at any other time. As previously stated, doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See Matter of Ho, id.*

As discussed above, the applicant has provided conflicting information and documentation in support of her application. The applicant has not provided any objective evidence to justify or reconcile the contradictions. Therefore, the remaining documentation in the record consisting of – an envelope mailed by the applicant from the United States to Mexico, and a series of letters and affidavits from individuals who claim to have employed, resided with or otherwise known the applicant in the United States during the 1980s – is suspect and not credible. Thus it must be concluded that the applicant has failed to establish his continuous residence in the United States for the requisite period.

For example, the envelope allegedly mailed by the applicant from Los Angeles to Mexico bears a United States postal stamp and a postmark date of January 20, 1986, with a return address for the applicant of [REDACTED] Los Angeles, California. This return address is inconsistent with the address claimed by the applicant for the same period. According to the applicant, her address as of January 1986 was [REDACTED], Los Angeles, California, from January 1986 to 1987. The applicant did not claim the [REDACTED] as any of her addresses in the United States at any time.

The notarized letters and affidavits in the record – dated in 2004 and 2005 – from individuals who claim to have employed, resided with or otherwise have known the applicant during the 1980s have minimalist or fill-in-the-blank formats with very little input by the authors. The letters and affidavits claim to have known the applicant resided in the United States from 1980. However, as discussed above, the applicant herself stated that she entered the United States in 1981. As previously stated, doubt cast on any aspect of the applicant’s evidence also reflects on the reliability of other evidence in the record. *See Matter of Ho, id.* The authors provided very few details about the applicant’s life in the United States, and the nature and extent of their interactions with her over the years. The letters and affidavits are not accompanied by any documentary evidence demonstrating the authors’ personal relationships with the applicant in the United States during the 1980s. For the reasons discussed above, the AAO finds that the notarized letters and 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 the requisite period.

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 she is eligible for the benefit sought.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he 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.