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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
and Immigration
Services**

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[REDACTED]

FILE: [REDACTED] Office: NEW YORK Date: JUL 30 2009
MSC 06 048 12265

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, 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, and a Form I-687 Supplement, CSS/Newman (LULAC) Class Membership Worksheet. The director denied the application because the applicant did not establish that she continuously resided in the United States for the duration of the requisite period. The director noted that the applicant stated on her Form G-325A, Biographic Information, that she was a student at Malaysia College from June 1985 through September 1988 and that she resided in Malaysia from April 1958 through June 1989.

On appeal, the applicant states:

I don't agree with the decision. The notice of decision mentioned a Form G-325A, first of all, I had never filled out such form. Second, the information on it was not mine the INS must make a mistake.

Although a Form G-28, Notice of Entry of Appearance as Attorney or Representative, has been submitted. However the person consenting to representation on the Form G-28 is a person other than the applicant. Therefore, the applicant shall be considered as self-represented and the decision will be furnished only to her.

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). To meet his or her burden of proof, 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. 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.* 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 request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, to deny the application.

The pertinent evidence in the record is described below.

1. A notarized statement from [REDACTED] who states that she knows the applicant resided in the United States since 1981.
2. A nonimmigrant student document and Form I-94, Record of Arrival, showing the applicant was admitted to the United States as a B-2 nonimmigrant visitor on April 19, 1987, and that her status was changed to that of an F-1 nonimmigrant student on November 2, 1987, with authorization to attend Pace University.
3. An unsigned and unaddressed student welcoming letter dated May 1987 from [REDACTED] International Student Advisor, at Pace University in New York, New York.
4. An envelope addressed to the applicant at [REDACTED] Flushing, New York, from Pace University in New York, New York, postmarked July 22, 1987.
5. The applicant's “examinee's score record” from a firm named Test of English as a Foreign Language in Princeton, New Jersey, for an examination she competed in August 1987 addressed to her at [REDACTED] Flushing, New York.

6. An envelope addressed to the applicant at [REDACTED] Jackson Heights, New York, from a testing firm in Princeton, New Jersey, postmarked September 30, 1987.
7. The applicant's student transcript for the fall of 1987 from Pace University in New York, New York.
8. Two employment verification letters from [REDACTED], President of Fuji China Restaurant in New York, New York, who states the applicant has worked for the firm since 1986.
9. The applicant's Form G-325A, Biographic Information, signed February 4, 1992 indicating that she was a student at Malaysia College from June 1985 through September 1988 and that she resided in Malaysia from April 1958 through June 1989.

The affiant (Item # 1 above) claims to have known the applicant for a substantial length of time, in this case since 1981. However, this document is not accompanied by any documentary evidence such as photographs, letters or other documents establishing the affiant's personal relationships with the applicant in the United States during the 1980s. In view of these substantive shortcomings, the AAO finds that the statement has little probative value. It is not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through the date he attempted to file a Form I-687 or was caused not to timely file during the original filing period from May 5, 1987 ending on May 4, 1988. AAO acknowledges that the applicant began residing in the United States on April 19, 1987 (Items # 2 through # 8) when she entered this country as a nonimmigrant visitor and then became a nonimmigrant student. However, she was not in a qualifying status as she was not in this country illegally during the requisite period.

On appeal, the applicant states that the director's decision mentioned a Form G-325A that she had never filled out. The record reflects that the Form G-325A was filed with the applicant's Form I-485, Application for Permanent Residence, filed on February 5, 1992 along with a Form I-130, Petition for Alien Relative, filed in her behalf. The Form I-485 and the Form I-130 were not adjudicated because the check submitted to pay the required fees did not clear the bank. It is noted that though it is probable that the information on her Form G-325A is fabricated and she did not personally fill out the document, a copy of her passport was attached to the Form I-485 indicating that she participated in the preparation of the documents presented in her behalf including the fabricated Form G-325A. Beyond the decision of the director, the applicant is ineligible for temporary resident status due to her inadmissibility for her misrepresentations under sections 212(a)(6)(C)(i) of the Immigration and Nationality Act. Consequently, the director's decision is affirmed for this additional reason.

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. Further, the applicant must resolve any inconsistencies in the record with competent, independent, objective evidence. Attempts to explain or reconcile such inconsistencies, absent competent objective evidence

sufficient to demonstrate where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). These inconsistencies cast doubt not only on the evidence containing the conflicts, but on all of the applicant's evidence and all of her assertions.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate entry into the United States prior to January 1, 1982, and continuous residence during the requisite period.

Based upon the foregoing, 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*. Therefore, the applicant is ineligible for temporary resident status under section 245A of the Act.

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