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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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FILE: [REDACTED]
MSC-06-095-10903

Office: SAN DIEGO

Date: **MAR 25 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. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed or rejected, 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.

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, 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, San Diego, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application, finding that the applicant had failed to meet her burden of proving by a preponderance of the evidence that she resided continuously and was physically present in the United States during the requisite period. Specifically, the director found that the documents submitted along with the application were neither credible nor probative as evidence of the applicant's claim of continuous residence in the United States.

On appeal, the applicant asserts that the letters submitted were credible as evidence that she continuously resided in the United States throughout the requisite period. She further states that all of the individuals who wrote the letters for her have included their names, addresses, as well as their telephone numbers.

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)(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, "[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 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 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 her claim of continuous residence in the United States since before January 1, 1982 is probably true.

As evidence that she has continuously resided in the United States throughout the requisite period, the applicant submitted seven undated and unsigned statements from her friends and relatives. All seven people attested to the applicant's physical presence and continuous residence in the United States since 1981. Several of them stated that although they were in Mexico during the statutory period, they knew that the applicant was in the United States because the applicant often talked to them on the telephone. The relatives who were in the United States during the requisite period claimed that the applicant resided with them at their house at [REDACTED], when she arrived in the United States in 1981.

None of them, however, stated with any specificity the address or addresses at which the applicant was residing in the United States. Those who claimed they resided in Mexico during the requisite period submitted no contemporaneous documents to support their claims. Their references to having talked with the applicant often on the telephone are not based on personal knowledge and not persuasive as evidence of the applicant's continuous residence in the United States throughout the requisite period. The statements are not signed and will be given minimal weight.

Furthermore, the affidavits of the applicant's siblings and brother-in-law all indicate that the applicant resided with them in the house located at [REDACTED]. The applicant's Form I-687 does not indicate that the applicant ever lived at that address. 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 or explanation has been submitted or provided to reconcile the inconsistencies in the record concerning the applicant's residence in the United States at [REDACTED]

The applicant further failed to include at part #30 of her Form I-687 the specific or approximate days, months, and years next to her addresses in the United States. Her failure to include the dates of her residences in the United States on her application combined with the deficient statements undermine her credibility and claim that she has resided in the United States continuously throughout the requisite period.

The AAO notes that the applicant indicated at part #32 of her Form I-687 that she visited her family in Mexico every year between 1983 and 1987. She does not state the length of each of her trips to Mexico during that time, and the length of her absences from the United States cannot be determined from the record. The record does not establish that the applicant did not break the continuity of any residence she had in the United States between 1983 and 1987 by a single absence exceeding 45 days or combined absences of more than 180 days. For this additional reason, the application may not be approved. 8 C.F.R. § 245a.2(h).

The absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period combined with inconsistencies noted in the record and ambiguity relating to her absences from the United States, 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 as well as ambiguity concerning her absences from the United States, 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.