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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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Services

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FILE:

MSC 05 243 11551

Office: LOS ANGELES

Date:

MAR 27 2009

IN RE:

Applicant:

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:

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, Los Angeles. 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 (Act), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet. The director denied the application, finding that the applicant had not provided credible evidence to establish that she had entered the United States prior to January 1, 1982, and thereafter continuously resided in the United States in an unlawful status for the duration of the requisite period.

On appeal, counsel states that the decision has hastily overlooked critical points of evidence and completely disregarded the standard of proof as explained and illustrated in *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989).

Counsel also requests the opportunity to present oral argument in order to lay out the merits of this case which he claims has been difficult for the United States Citizenship and Immigration Services (USCIS) to digest and properly analyze. The regulations provide that the requesting party must explain in writing why oral argument is necessary. Furthermore, USCIS has the sole authority to grant or deny a request for oral argument and will grant argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. *See* 8 C.F.R. § 103.3(b). In this instance, the petitioner identified no unique factors or issues of law to be resolved. Moreover, the written record of proceedings fully represents the facts and issues in this case. Consequently, the request for oral argument is denied.

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 245(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).

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).

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-*, *supra*. 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 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 submitted sufficient credible evidence to meet her burden of establishing that she (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 documentation that the applicant submits in support of her claim to have arrived in the United States before January 1, 1982 and lived in an unlawful status during the requisite period consists of affidavits of relationship written by friends, attestations from previous employers, a letter signed by the pastor of the [REDACTED] and other evidence. The AAO will consider all of the evidence relevant to the requisite period to determine the applicant’s eligibility.

In the applicant’s class membership determination form filed in conjunction with her application for temporary residence status under section 245A of the Act and during her Form I-687 application interview, the applicant states that she entered the United States without inspection on December 15, 1981. However, on the applicant’s Form I-589 application, Request for Asylum in the United States, which is a part of the record of proceeding, she stated that she entered the United States without inspection on December 10, 1988 and attended high school at the Instituto Nacional Y Prieto Mexico from February 1988 until October 1988, and obtained her high school equivalency in La Puente, California from February – December 1991. She also claimed to be a Guatemalan national and citizen and living in the United States because of the unsafe conditions in Guatemala.

The record also contains the applicant's Form G-325A dated December 10, 1991, signed by the applicant and submitted in connection with her asylum application. Here, the applicant claims that her last address outside the United States was [REDACTED] Chiapas, Mexico, from February 1988 to December 1988.

The applicant lists her nationality and citizenship on her Form I-687 as Mexican. She lists her addresses as [REDACTED] Los Angeles, California, from December 1981 to 1987; [REDACTED] Thousand Oaks, California, from June 1982 to 1990; [REDACTED], Westhills, California, from January 1982 to 1987; [REDACTED] Venice, California, from 1986 to 1988 and [REDACTED], Los Angeles, California, from 1988 to 1989. The applicant claims to have resided in the United States at multiple residences simultaneously and attended high school in Mexico during the same time period.

The inconsistencies regarding the dates the applicant initially entered and resided continuously in the United States are material to the applicant's claim in that they have a direct bearing on the applicant's residence in the United States during the requisite period. No evidence of record resolves these inconsistencies. 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 petitioner submits competent objective evidence pointing to where the truth lies. 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. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The affidavit from [REDACTED] states that he met the applicant in mid-December 1981 when she arrived at his house at [REDACTED] Los Angeles, California. The affiant explains that the applicant lived in his guesthouse on the weekends because she used to work for him as a babysitter. The affiant states that he moved to [REDACTED] Venice, California, where he rented her a bedroom until February 1988. This contradicts the applicant's Form G-325A that shows that the applicant was residing outside the United States in Mexico in February 1988. This contradicts the affidavit from [REDACTED] that states the applicant lived with her family since February 1982. The affiant states that the applicant received room, board, and an allowance in exchange for sharing household duties. In her statement dated January 2, 1991, [REDACTED] states that the applicant worked as a live-in housekeeper at [REDACTED] Thousand Oaks, California, from February 1, 1982 to date. This contradicts the affidavit written by [REDACTED] which states the applicant was residing in his guest house on weekends and the applicant's Form I-687 application that indicates the applicant did not reside at [REDACTED] Thousand Oaks, California, until June 1982. While the applicant could conceivably have lived with [REDACTED] full-time and with [REDACTED] on weekends, the record does not explain the multiple residences where the applicant claims to have resided simultaneously. Moreover, the regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; state the applicant's duties; declare whether the information was taken from company records; and, identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable. As the affidavits of [REDACTED]

and do not conform to the requirements stipulated in the aforementioned regulation, they will be given nominal weight.

The affidavits from and state that they first met the applicant in December 1981 at the Seventh Day Adventist Church, Los Angeles, California. states in her affidavit that she met the applicant in December 1981 while visiting families on behalf of the church and that the applicant became active from the beginning.

The affidavits from and state that they met the applicant in January 1982 at church. In her affidavit, states that she met the applicant in January 1982 as a referral from another friend for the applicant to help her in her house every two weeks. states that he met the applicant on January 15, 1982, two weeks after she came to the United States. The affidavit from states that she met the applicant in March 1982 at her house and states in his affidavit that he met the applicant in February 1982 through his wife.

The affidavits do not include sufficient detailed information about the applicant's continuous residency in the United States since December 15, 1981. The affiants fail to specify social gatherings and other special occasions or social events where they saw and communicated with the applicant during the requisite period. The affiants also fail to indicate any other details that would lend credence to their claimed knowledge of the applicant's residence in the United States during the requisite period.

The affidavits do not contain concrete information, specific to the applicant and generated by the asserted associations with her, which would reflect and corroborate the extent of those associations and demonstrate that they are a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the affidavits. To be considered probative and credible, witness affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Upon review, the AAO finds that the affidavits provided by the applicant do not contain sufficient detail to establish the reliability of their assertions.

In a letter dated January 12, 1991, the Church Pastor of the states that the applicant has been a friend of the church since January 1, 1982 to the present date and resides at Thousand Oaks, California. This contradicts the applicant's Form I-687 where she claims she resided at Los Angeles, California, from 1989 to 1993. The letter does not corroborate any of the information given by the applicant concerning her initial entry, periods and places of residence and employment in the United States. Further, the regulation at 8 C.F.R. § 245a.2(d)(3)(v) provides requirements for attestations made on behalf of an applicant by churches, unions, or other organizations. Attestations must (1) identify applicant by name; (2) be signed by an official (whose title is shown); (3) show inclusive dates of membership; (4) state the address where applicant resided during membership

period; (5) include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; (6) establish how the author knows the applicant; and (7) establish the origin of the information being attested to. The letter does not contain most of the aforementioned requirements and therefore will be given nominal weight.

The applicant's remaining evidence consists of copies and the original receipts from various vendors. The receipts do not contain complete information and are either missing the applicant's full name, or address, or both, or the applicant never listed the address shown on the receipt as a place she resided in the United States on Form I-687. For example, the receipt from [REDACTED] dated March 24, 1985 shows the applicant residing at [REDACTED] San Bernardino, California. This address is not listed as one of the applicant's residences on her Form I-687 application. Further, the receipts do not establish the applicant's continuous residence throughout the requisite period.

The applicant, on appeal, states that she was unaware of the facts contained in the asylum application that she filed in 1991 and signed under penalty of perjury. The AAO does not find it probable that the applicant after a claimed 10 year presence in the United States did not understand English or the assertions in the asylum application. While the record contains some evidence of the applicant's presence in the United States during some part of the requisite period, when viewed individually and together with other evidence of record, the applicant has not established her continuous residence in the United States since prior to January 1, 1982 and throughout the requisite period.

In the instant case, the applicant has failed to submit sufficient evidence to overcome the director's denial. The evidence calls into question the credibility of the applicant's claim of continuous unlawful residence in the United States throughout the requisite period. The evidence submitted is insufficient to establish the applicant's 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 requisite period.

Therefore, 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*. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act.

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