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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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FILE: [REDACTED]
MSC-06-096-12764

Office: FAIRFAX

Date: **MAY 12 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, Fairfax. 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. In denying the application, the director determined that the applicant's Form I-687 application was postmarked on January 4, 2006, and therefore had been filed after the December 31, 2005 filing date. 8 C.F.R. § 245a.12(a). The director noted, "pursuant to the CSS/Newman (LULAC) Settlement Agreements (Paragraph 4), 'applications shall be deemed filed on the date postmarked in accordance with the provisions at 8 C.F.R. § 245a.12(a).'" The director denied the application, finding that the applicant had failed to timely file her Form I-687 application.

On appeal, the applicant asserts that she did file her Form I-687 application prior to December 31, 2005. The applicant submits a copy of her United States Postal Service Certified Mail Receipt as evidence.

In the instant matter, the record of proceeding contains the postmarked envelope sent by the applicant to United States Citizenship and Immigration Services (USCIS) and postmarked December 27, 2005. It is determined by the AAO that the applicant's application was received by the USCIS office on January 4, 2006. Therefore, her application was postmarked prior to the deadline date of December 31, 2005.

Although the director's decision with respect to this issue is withdrawn, the AAO will adjudicate the applicant's appeal as it relates to her admissibility and her claim of continuous residence in the United States since prior to January 1, 1982.

The AAO sent the applicant a Notice of Intent to Deny (NOID) dated April 7, 2009 to her last known address. The NOID was returned as not deliverable and unable to forward.

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. *See* 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).

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 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 establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

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 on January 4, 2006. The applicant indicated on her Form I-687 application at part #33, where she was asked to list her absences from the United States the applicant stated that she was absent from the United States from August 7, 1987 to September 15, 1987. In contrast, the applicant stated under oath during her immigration interview on October 30, 2006 that she was absent from the United States for four months in 1987. It is also noted that the record of proceeding contains a copy of the applicant's birth certificate that was issued in Mexico on March 4, 1987. The inconsistencies cast doubt on the applicant's proof. 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. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

The applicant testified during her interview that she was absent from the United States for four months in 1987, returning to the United States in November of that year. Based upon the applicant's own testimony, she was absent from the United States for more than forty-five (45) days which is allowed for a single trip, and there is no evidence to show that the absence was due to emergent reasons. A single absence from the United States in excess of 45 days during the statutory period will break the continuity of residence required for eligibility under the legalization provisions. 8 C.F.R. § 245a.2(h)(1).

The applicant submitted the following evidence:

- Copies of pay stubs from Architectural Digest, West Costal Cycle, and Knapp Communications Corporation;
- A copy of a receipt from Glassman Hardware dated October 9, 1985;
- A photocopy of an envelope addressed to the applicant at [REDACTED] in Los Angeles, California and postmarked November 6, 1983;
- A copy of a United States Postal Service money order receipt bearing the applicant's name and dated October 10, 1984;
- A copy of a Western Union money order receipt bearing the applicant's name and dated May 3, 1985; and,
- A copy of page one of the applicant's 1988 Income Tax Form 1040.

Neither the pay stubs nor the Glassman receipt contain the applicant's name or other type of identifier; therefore, such documents will not be considered as evidence of the applicant's presence in the United States. Although the money order receipts and the postmarked envelope may be some evidence of the applicant's presence in the United States, they are insufficient to establish her continuous residence in the United States throughout the requisite period. There is no evidence to show that the applicant actually filed her 1988 income tax return with the Internal Revenue Service.

The applicant submitted the following attestations as evidence:

- An affidavit from [REDACTED] in which he stated that he employed the applicant as a house keeper from December 1981 to September 1983.
- An affidavit from [REDACTED] in which she stated that she employed the applicant as a housekeeper from October 1983 to October 1986.
- An affidavit from [REDACTED] in which he stated that he employed the applicant as a housekeeper from November 1986 to August 1987.
- An affidavit from [REDACTED] in which he stated that the applicant lived in Los Angeles, California from May 1981 to June 1990 and that the applicant was his friend from Mexico. He also stated that they have visited each other since the applicant came to the United States.
- An affidavit from [REDACTED] in which he stated that the applicant has resided in Los Angeles, California from January 1981 to July 1990 and that he and the applicant are friends and that they were neighbors in [REDACTED] in Los Angeles, California.

The affidavits are lacking in detail. The employment affidavits do not conform to regulatory standards for attestations by employers. Specifically, the affidavits do not specify the applicant's place of residence during the employment periods or any periods of layoffs. 8 C.F.R. § 245a.2(d)(3)(i). The affiants fail to indicate whether the employment information was taken from company records. Neither has the availability of the records for inspection been clarified. 8 C.F.R. § 245a.2(d)(3)(i). Affiant [REDACTED] fails to specify when he met the applicant and under what set of circumstances. He also fails to specify the applicant's place of residence during the requisite period. Affiant [REDACTED] has not described their relationship with sufficient detail or submitted any evidence to substantiate his claim.

The AAO finds that, upon an examination of each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, the applicant has not shown by a preponderance of the evidence that she continuously resided in the United States during the requisite period. She has failed to overcome the director's basis for denial. The attestations and other evidence submitted are lacking in detail and probative value.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of this 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 applicant inconsistent statements and her reliance upon evidence that is lacking in detail and probative value, it is concluded that she has failed to establish continuous

residence in an unlawful status in the United States for the requisite period 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.