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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  
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FILE: [REDACTED] Office: LOS ANGELES  
MSC 06 097 28431

Date: NOV 20 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.

Perry J. Rhew  
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 June 1981, 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 5, 2006. 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 and was continuously physically present in the United States for the duration of the requisite periods.

On appeal the applicant asserts that she has submitted sufficient credible evidence to establish that she meets the continuous residence and continuous physical presence requirements for the duration of the requisite periods. The applicant submits copies of documentation previously 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 documentation that the applicant submits in support of her claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of the following:

- Copies of W-2 Earnings Statements in the name of [REDACTED] from [REDACTED] [REDACTED], in Tustin, California, for the years 1982, 1986 to 1988.
- A copy of the Social Security Administration (SSA) Earnings Statement showing that the applicant earned income in the United States starting from 1991.

- Photocopies of envelopes mailed by [REDACTED] from the United States from 1985 to 1988.
- A copy of a notice of stored vehicle bearing a date of February 15, 1985, addressed to [REDACTED] at [REDACTED]

The AAO has reviewed each document in its entirety to determine the applicant's eligibility.

The record reflects that the applicant indicated on the Form I-687 that she had used the assumed name of [REDACTED] at some point. Although the applicant did not submit any primary document to show that she used the assumed name, the AAO will accept the applicant's statement as credible regarding the use of the assumed name.

The copies of the W-2 Wage and Tax Statements from [REDACTED] do not appear to be genuine. The social security number on the statements is different from the social security on the copy of the applicant's Earnings Statement from the Social Security Administration (SSA) statement submitted by the applicant as evidence of her continued residence in the United States. The applicant did not supplement the Wage and Tax Statements with a letter or other documentation from the company confirming that the applicant was actually employed during the periods indicated. The original is not in the record for proper verification.

The copy of the SSA Earnings Statement shows that the applicant earned income in the United States starting from 1991 onward. Therefore the statement serves as credible evidence of the applicant's continuous residence and continuous physical presence in the United States from 1988, but does not serve as evidence that the applicant entered the United States before January 1, 1982 and resided continuously in the country through the requisite period.

The Copy of the Notice of Stored Vehicle shows that a vehicle was removed on February 15, 1985. Although this document was addressed to the applicant as the legal owner, it does not establish that the applicant was residing in the United States during the year 1985 much less before January 1, 1982. Thus, the notice has little probative value as evidence of the applicant's continuous residence in the United States from before January 1, 1982 through the requisite period.

As for the photocopies of envelopes which the applicant claims that she mailed from the United States to individuals in Mexico during the years 1982, 1986, 1988, and 1989, they are not persuasive evidence that the applicant entered the United States before January 1, 1982 and resided continuously in the country through the requisite period. The information about the sender and the recipients appear to have been altered. The address of the recipient on all the envelopes does not appear to be a complete address. The envelopes which the applicant claims were mailed during different periods appear to have been a photocopy of the same envelope with the postmark dates inserted to make it appear that they were mailed at different periods.

Even if the AAO accepted that the envelopes were mailed from the United States during the years 1982, 1986 to 1989, they only show that the envelopes were mailed from the United States and not that the applicant resided in the United States during those years. Thus, the envelopes have little probative value as evidence of the applicant's continuous residence in the United States during 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 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 on this basis.

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