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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 05 357 11180

Office: EL PASO

Date: OCT 23 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:



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 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, El Paso. 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 applicant has been residing in the United States since July 1981 and is eligible for temporary residence under section 245A of the Act.

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-*, 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 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 and family members, two border crossing cards and other evidence. The AAO will consider all of the evidence relevant to the requisite period to determine the applicant’s eligibility; however, the AAO will not quote each witness statement in this decision.

During the applicant’s I-687 application interview, the applicant claimed that she entered the United States with a passport local¹ in 1971. The applicant states that she was two or three months old. The copy of the identity document shows that it was issued to the applicant’s mother, [REDACTED], and her daughter, [REDACTED] one month old, and [REDACTED] two years old. The other child in the passport photograph is not named. It is not clear from the record whose identity document contains the stamps evidencing the border crossings in 1971, 1975, 1977 and 1981. The applicant submitted two border crossing cards, one bearing alien number [REDACTED] with an expiration date of December 23, 2004, and the other with an expiration date of January 9, 2010. The

¹ The interviewing officer states that the applicant was asked if she was in possession of the entry document in question and her attorney submitted a paper document with a family photo attached titled, Tarjeta local de . . . para Nacionales residents en las

affiants indicate that the family first entered the United States in 1981. Counsel states in his brief that the applicant first entered the United States in July, 1981, as a visitor.

The inconsistencies regarding the applicant's date of entry into the United States are material to the applicant's claim in that they have a direct bearing on the applicant's continuous 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 applicant submitted several affidavits from friends to establish her initial entry and residence in the United States during the requisite period. The affidavits of [REDACTED] and [REDACTED] all contain statements that the affiants have personally known and been acquainted with the applicant's father, [REDACTED], and that they met his wife, [REDACTED] and his three children, [REDACTED] (the applicant), and [REDACTED]. The affiants state that [REDACTED] told them that he and his family have been in the United States since July 23, 1981. The affiants also state that they know [REDACTED] was in the United States between 1982 and May, 1988, because they use to communicate and socialize with him. The affiants do not provide any information about the applicant.

The applicant's uncle, [REDACTED] and [REDACTED] state that the applicant's father, [REDACTED], his wife, [REDACTED], and his three children, [REDACTED] (the applicant), and [REDACTED] have been in the United States since July 23, 1981. The affiants do not state how they gained this knowledge. [REDACTED] states that he and the applicant's father, [REDACTED] were in the business of buying and selling used tires. He states he knows that [REDACTED] was in the United States between 1982 and May, 1988, because most of the time they were together buying tires and other car crafts. [REDACTED] states that he knows [REDACTED] was in the United States during the requisite period because he used to call him from Mexico, write letters, and made a visit to the States to meet with him and his family. The affiants do not provide any information about the applicant.

Although the applicant has submitted several affidavits in support of her application, the affidavits submitted do not contain sufficiently detailed descriptions about the applicant's residence in the United States. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. The absence of sufficiently detailed affidavits to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of her claim. For instance, none of the witnesses supplies any details about the applicant's life, such as,

general knowledge about her education, hobbies, employment, shared activities with the applicant, and the manner she entered the United States.

The affiants do not provide 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 were 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. Given the applicant's reliance upon documents with minimal probative value, it is concluded that the applicant has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the requisite period. Therefore, the affidavits have little probative value.

Moreover, the applicant has not provided any documentation to show that she attended school in the United States. During her I-687 interview she stated that she completed first through fifth grade in Mexico and when she came to live in the United States at the age of ten, she did not go to school. The applicant also stated during her interview that she and her family returned to Juarez, Mexico, to live in 1989 and she completed high school in Mexico in 1990. No evidence indicates where the applicant attended the sixth through tenth or eleventh grade during the requisite period.

An applicant applying for adjustment of status under this part has the burden of proving by a preponderance of evidence that he or she is eligible for adjustment of status under section 245a of the Act. 8 C.F.R. § 245a.2(d)(5). In the instant case, the applicant has failed to submit sufficient evidence to overcome the director's denial. The insufficiency of 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

The AAO also finds that the applicant represented herself as eligible for nonimmigrant status and she was issued two border crossing cards. Yet, according to the claims which she made in this proceeding, her actual intent each time when applying for nonimmigrant status and upon returning to the United States has been to return to an unrelinquished domicile, to work without authorization and to reside indefinitely in the United States. Thus, during the statutory period, the applicant procured

entry into the United States by willfully misrepresenting a material fact. The applicant is not admissible under section 212(a)(6)(C)(i) of the Act based on these misrepresentations. For this additional reason, the application cannot be approved.

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