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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
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FILE: [REDACTED] Office: LOS ANGELES
MSC 05 265 11785 – Form I-687 Application
MSC 07 269 19886 – Form I-694 Appeal

Date: **SEP 03 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. The file has been returned to the National Benefits Center. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

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, New York, New York. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application on November 1, 2007, because the applicant failed to provide sufficient credible evidence of her continuous unlawful residence in the United States throughout the requisite time period. The applicant filed the current appeal from that decision on November 23, 2007.

On appeal, the applicant asserts that she has submitted all of the evidence she has available and requests that her case be reconsidered.

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.

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.

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). *See* 8 C.F.R. 245a.15(b). 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.12(f). Affidavits indicating specific, personal knowledge of the applicant’s whereabouts during the relevant time period are given greater weight than fill-in-the-blank affidavits providing generic information.

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; identify the exact period of employment; show periods of layoff; 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.

The AAO maintains plenary power to review this matter on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp.*, NTSB, 925 F.2d 1147, 1149 (9th Cir. 1991). The federal courts have long recognized the AAO's *de novo* review authority. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

On a form to determine class membership, signed under penalty of perjury on July 13, 1993, the applicant stated she first arrived in the United States on June 15, 1980, when she was 13 years old. On her Form I-687, Application for Status as a Temporary Resident, also signed under penalty of perjury on July 13, 1993, the applicant indicated she had been employed part-time in housekeeping and cleaning by [REDACTED] from 1980 until the date of signing the application, and was self-employed as a cleaner from July 1980 until April 1991.

In a March 1, 2002 sworn declaration, the applicant stated she lived with [REDACTED] a friend of her uncle, from June 1980 until July 1986 and, while living with her, helped [REDACTED] with chores and [REDACTED] helped her find cleaning jobs with [REDACTED] friends. The applicant stated one such friend was [REDACTED], for whom she cleaned house on weekends. The applicant stated that she moved in with the [REDACTED] family, and lived with them from July 1986 to August 1989, helping them with housework in exchange for room and board. The applicant further stated that she did not attend school and did not see a doctor at any time during the qualifying period.

In an attempt to establish continuous unlawful residence since before January 1, 1982 through the date of filing her Form I-687, the applicant has submitted the following documentation:

1. A June 22, 1993 affidavit from [REDACTED] (deceased), stating the applicant lived with her from 1980 until approximately June 1986 and that the applicant did not pay rent but helped her with housework.
2. Affidavits dated July 2, 1993, and March 2, 2002, from [REDACTED] stating he took the applicant to a bus station on September 15, 1987, and that the applicant returned to the United States from Mexico on October 10, 1987, after her grandfather died. Mr. [REDACTED] also submitted a sworn statement, dated December 18, 2001, stating he met the applicant when the applicant lived with [REDACTED], and that the applicant came to live with her family in July 1986.

3. A letter from [REDACTED], stating he met the applicant in 1980, when the applicant lived with [REDACTED], and that the applicant cleaned house for him on weekends until 1991.

On appeal, the applicant also submits:

4. An affidavit from [REDACTED], including documentation establishing that Ms. [REDACTED] resided in the United States during the time period attested to, stating that she met the applicant in 1980 and saw her often throughout the relevant years.

In summary, the applicant has provided no employment letters that comply with the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(i)(A) through (F), no utility bills according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(ii), no school records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iii), no hospital or medical records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iv), and no attestations from churches, unions, or other organizations that comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(v). The applicant also has not provided documentation (including, for example, money order receipts; passport entries; children's birth certificates; bank book transactions; letters of correspondence; a Social Security card; automobile, contract, and insurance documentation; deeds or mortgage contracts; tax receipts; or insurance policies) according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(vi)(A) through (K). The documentation provided by the applicant consists solely of third-party affidavits ("other relevant documentation"). Other than the affidavit from Ms. [REDACTED], these documents lack specific details as to how the affiants knew the applicant and fail to establish that the affiants were actually present in the United States throughout the time periods attested to.

It is noted that the applicant submitted a birth certificate in the name of [REDACTED]. However, according to a copy of a Petition for Change of Name filed by the applicant in the Los Angeles Superior Court on July 29, 2004, her birth name is [REDACTED]. The applicant has submitted no birth certificate in that name or any evidence that the court granted the name change. The applicant asserted in a September 21, 2004, sworn statement that the birth certificate in the name of [REDACTED] had been provided to her by [REDACTED]. The applicant has not submitted a birth certificate reflecting her birth name.

The record also reflects that the applicant was arrested by the Los Angeles Police Department on December 1, 1987 for disorderly conduct prostitution ([REDACTED]). The record does not contain a final disposition of this arrest. In any future proceedings before United States Citizenship and Immigration Services (USCIS), the applicant must provide the final court disposition of this arrest and any other charges against her.

The paucity of the documentation submitted to corroborate the applicant's claim of continuous residence for the entire requisite period detracts 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.

It is concluded that the applicant has failed to establish by a preponderance of the evidence that she continuously resided in an unlawful status, and was continuously physically present, in the United States for the requisite time periods 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.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 245a.2(d)(5) of the Act.

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