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U.S. Citizenship
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FILE: 
MSC-06 097 11982

Office: LOS ANGELES

Date: **SEP 08 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: 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 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 December 1980, 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 for the duration of the requisite period.

On appeal the applicant submits additional documentation as evidence of her residence in the United States and requests that the director grant her request for temporary resident status in the United States.

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 only documentation submitted by the applicant in support of her claim that she entered the United States before January 1, 1982 and resided continuously in the country through the requisite period consists of the following:

- Affidavits dated in 2007, from individuals who claim to have employed, provided accommodation to or otherwise known the applicant in the United States during the 1980s.
- Two Polaroid photographs of the applicant with no date or any markings as to when and where the photographs were taken.

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

There is no contemporary documentation from the 1980s that shows the applicant to have resided continuously in the United States during the requisite period. For someone claiming to have lived in the United States since December 1980, it is noteworthy that the applicant is unable to produce a solitary piece of primary evidence during the following eight years through May 4, 1988.

The record reflects that the applicant has submitted contradictory statements and documentation in support of her application. On the Form I-687 she filed in January 2006, the applicant did not provide her employment information in the United States during the requisite period. The first employment information provided by the applicant listed [REDACTED] as her employer from April 2002 to January 2005. This information is contrary to the affidavit submitted by [REDACTED] indicating that the applicant was employed as a housekeeper from August 1982 to 1986 and again from April 2002 to January 2005. The affidavit from [REDACTED] dated August 29, and October 9, 2007, stated that the applicant resided with her at [REDACTED], Costa Mesa, California and worked with her from 1981 through 1989. The applicant however, indicated on the Form I-687 she filed in January 2006, that she resided at [REDACTED], Santa Ana, California, from December 1981 to April 1989, and did not list [REDACTED] as one of her employers during the 1980s or at any other time.

The contradictory information in the record regarding the applicant's residence and employment information casts some doubt on the veracity of her claim that she entered the United States before January 1, 1982 and resided continuously in the country through the requisite period. 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 without competent objective evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See id.*

As discussed above, the applicant has submitted conflicting statements and documents in support of her application. The applicant has not provided any objective evidence to justify and reconcile the contradictions. Therefore, the remaining documentation in the record consisting of affidavits from individuals who claim to have known the applicant during the 1980s and two photographs of the applicant is suspect and not credible. Thus it must be concluded that the applicant has failed to establish her continuous residence in the United States for the requisite period.

The affidavits in the record from individuals who claim to have employed, offered accommodation or otherwise have known the applicant during the 1980s, have minimalist format with very few details about the applicant's life in the United States. While they all claimed to have employed the applicant at various times during the 1980s, the applicant did not list any of them as her employers during the 1980s. As discussed above, the affidavits are inconsistent with the information provided by the applicant on the Form I-687. For the reasons discussed above,

the affidavits have little probative value. They are not persuasive evidence that the applicant continuously resided in the United States from before January 1, 1982 through the requisite period.

The two photographs in the record do not bear any date or other markings showing when and where they were taken. Thus, the photographs have little probative value. Even if the AAO accepts that the photographs were taken in the United States during the requisite period, they are not sufficient evidence to establish that the applicant resided in the United States during the years they were taken, much less for the duration of the requisite period. Therefore, the photographs have little probative value. They are not persuasive evidence that the applicant resided continuously in the United States in an unlawful status from before January 1, 1982 through 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.

Given the paucity of evidence in the record, the AAO finds that 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.