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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

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U.S. Citizenship and Immigration Services

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[Redacted]

FILE:

[Redacted]

Office: MIAMI

Date:

MSC-05 081 11626

SEP 08 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:

[Redacted]

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

The applicant, a native of Trinidad and Tobago who claims to have lived in the United States since 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 December 20, 2004. 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 counsel asserts that the director did not properly evaluate the documentation submitted by the applicant in support of her application. In counsel's view, the evidence in the record is sufficient to establish that the applicant meets the continuous residence requirement for the requisite period. Counsel requested a copy of the Record of Proceedings (ROP) and indicated that he will submit a brief/evidence within 30 days of receiving the ROP. The record indicates that the ROP request was processed on June 23, 2009. The record reflects that counsel has not submitted a brief or additional evidence as indicated. The AAO will consider the record as complete and will adjudicate the application based on the evidence 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 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 primarily of affidavits from three individuals who claim to have known that the applicant left Trinidad and Tobago and traveled to the United States in May 1981.

The affidavit from [REDACTED] sworn to on December 8, 2004, claims that she has known the applicant since August 1978 in Trinidad, that the applicant and her daughters traveled to the United States in May 1981, that she and the applicant kept in touch while the applicant was in the United States and that in 1985, she and her family came to the United States and lived with the applicant at the applicant's residence at [REDACTED] Ft. Lauderdale, Florida. Ms. [REDACTED] claims that she and the applicant remain friends to date.

The affidavit from [REDACTED] sworn to on December 8, 2004, claims that she has known the applicant since 1978 in Trinidad, that she knew the applicant and her family left Trinidad for the United States in May 1981 because her husband drove the applicant and her family to the airport. [REDACTED] claims that she and the applicant visited each other and that they remain good friends. [REDACTED] did not indicate when she herself entered the United States and did not indicate the applicant's address in the United States during the 1980s or how she knew the applicant continuously resided in the United States since May 1981.

The affidavit from [REDACTED] sworn to on December 8, 2004, claims that she has know the applicant since 1977 in Trinidad, that she knew the applicant and her family left Trinidad and traveled to the United States sometime in 1981, that she did not see or talk to the applicant for a long time, that the applicant called her from Florida on a New Year's day to wish her a happy New Year, and that she and the applicant promised to keep in touch.

The affidavits listed above provided very few details about the applicant's life in the United States such as where the applicant lived during the 1980s, where she worked, and the nature and extent of their relationships with the applicant in the United States over the years. The affiants, who indicated they were residing in Trinidad in 1981, claim to have known that the applicant continuously resided in the United States from 1981. The affiants did not submit documentation to establish when they came to the United States, and their residence in the United States during the 1980s, or how they acquired the knowledge that the applicant continuously resided in the United States from 1981. Although the affiants claim that they were friends with the applicant and that they kept in touch with the applicant by phone, letters and exchange of pictures, none of the affiants provided any documentary evidence demonstrating their personal relationships with the applicant in the United States during the 1980s. For the reasons discussed above, the AAO finds that the affidavits have little probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through the requisite period.

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 1981, it is noteworthy that the applicant is unable to produce a solitary piece of primary evidence during the following seven years through May 4, 1988.

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 analysis of the evidence, the AAO concludes 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.