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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

[redacted]

FILE: [redacted] Office: LAS VEGAS Date: SEP 23 2009
[redacted] – consolidated herein]
MSC-05 251 36455

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.

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 Las Vegas, Nevada. 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 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 June 8, 2005. 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 asserts that the director did not properly evaluate the documentation she submitted in support of her application. In the applicant's view, the documentation in the record is sufficient to establish that she meets the continuous residence requirement for duration of the requisite period.

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).

"Continuous residence" is defined at 8 C.F.R. § 245a.1(c)(1)(i) as follows: "An alien shall be regarded as having resided continuously in the United States if no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, through the date the application for temporary resident status is filed, unless the alien can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed."

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 has furnished sufficient credible evidence to demonstrate that she resided continuously in the United States in an unlawful status from before January 1, 1982 through the date of filing the application or through the date she attempted to file

a Form I-687 during the original one-year application period that ended on May 4, 1988. Here, the applicant has failed to meet this burden.

The record reflects that the applicant who claims to have allegedly entered the United States in 1981, and resided continuously in the country thereafter was about 13 years old in 1981. The applicant did not indicate how she traveled to the United States at the age of 13 by herself. The applicant did not submit any documentation to establish such entry or any other evidence such as school records, hospital or medical records, which is expected from a child of 13 to establish her continuous residence in the United States. The applicant did not specify how she, a child of 13 years in 1981 was able to care for herself including renting and paying for an apartment.

The record also reflects that the applicant has provided conflicting information and statements regarding her initial entry into the United States and her continuous residence in the country during the 1980s. At her interview on January 11, 2006, the applicant indicated that she first entered the United States in August 1981. One a prior Form I-687 dated December 28, 1989, the applicant indicated that she last entered the United States in October 1981 and that she resided continuously in the country except for one trip to Mexico from July to August 1987. The applicant did not indicate any other trips outside the United States during the 1980s. On the Form I-687 she filed on June 8, 2005, the applicant indicated that she last came to the United States in August 1981, and resided continuously in the country through the requisite period. The applicant indicated that she traveled to Mexico to visit her sick mother but did not indicate the periods she was absent.

On a Form I-589 (application for asylum and withholding of removal) the applicant filed on August 14, 2001, the applicant indicated that she last entered the United States on October 15, 1981. And on a Form I-130 (petition for alien relative) filed on the applicant's behalf by her father on May 5, 1995, the applicant indicated that she last arrived in the United States in 1986. The applicant did not provide any documentation to establish any of the entries into the United States and did not provide any evidence to establish that she first entered the United States in 1981. The inconsistencies in the record cast some doubt on the veracity of the applicant's claim that she entered the United States before January 1, 1982 and resided continuously in the country for the duration of 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. *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.*

The record includes some photocopied and regular envelopes addressed to the applicant at the addresses she claims in the United States. The envelopes have illegible postmarks which look like they may have been altered by hand. The originals of the photocopied envelopes have not been submitted for a more precise verification. In addition, none of the envelopes bear a United

States Postal Service date or other marking to show that the envelopes were processed in the United States before delivering to the applicant. One of the envelopes incorrectly identified the applicant's address as – an address the applicant never claimed as any of her residences in the United States. For the reasons discussed above, the envelopes have little probative value. They are not persuasive evidence of the applicant's continuous residence in the United States during the requisite period.

The record includes a letter from of " " in Downey, California, dated December 15, 1989, stating that the applicant was employed as a "shirt maker" from January 1, 1985 to November 1987, and was paid in cash. The letter does not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i). The letter did not provide the applicant's address(es) during the period of employment, did not indicate whether the information about the applicant's employment was taken from company records, and did not indicate whether such records are available for review. Nor is the letter supplemented by earnings statements, pay stubs, or tax records to show that the applicant was actually employed during any of the years indicated. Thus, the employment letter has limited probative value. It is not persuasive evidence of the applicant's continuous residence in the United States for the duration of the requisite period.

The affidavits in the record from acquaintances who claim to have employed, or otherwise known the applicant during the 1980's, have minimalist or fill-in-the-blank formats with very little input from the affiants. The affiants provided few details about the applicant's life in the United States and the extent of their interactions with her over the years. Nor are the affidavits accompanied by any documentary evidence – such as photographs, letters, and the like – of the affiants' personal relationships with the applicant in the United States during the 1980s. In addition, the affiants did not provide documentation establishing their own identities and residence in the United States during the requisite period. In view of these substantive shortcomings, the affidavits have little probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States during the requisite period.

As discussed above, the applicant has submitted contradictory statements and information in support of her application. The applicant has not provided objective document to justify or clarify the contradictions in the record. Therefore the remaining documentation in the record – consisting of a copy of a money order receipt dated December 22, 1986, a copy of a rent receipt for October 22, 1987, and a copy of a pay stub from , for pay period11/25 to 11/28/86 – is suspect and not credible. The addresses on the money order and rent receipt is contrary to the addresses claimed by the applicant for those period, and the applicant did not identify as one of her employers during the 1980s. Thus, it must be concluded that the applicant has failed to establish that she entered the United States before January 1, 1982 and resided continuously in the country 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 he 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.