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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  
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FILE: [REDACTED]  
MSC-06-098-19891

Office: HOUSTON

Date:

**SEP 30 2009**

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Temporary Resident Status under 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, or *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 of the Houston office and 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 (LULAC) Class Membership Worksheet. The director denied the application, finding that the applicant was ineligible for adjustment to temporary resident status because 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 time period.

On appeal, the applicant asserts that the evidence which she previously submitted establishes by a preponderance of the evidence that she continuously resided in the United States in an unlawful status for the duration of the requisite time period. The applicant has submitted additional evidence on appeal.

The AAO has reviewed all of the evidence and has made a *de novo* decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.<sup>1</sup>

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.

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<sup>1</sup> The AAO maintains plenary power to review each appeal 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 (9<sup>th</sup> Cir. 1991). The AAO's *de novo* authority has long been recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n.9 (2d Cir. 1989).

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. 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. *Matter of Ho*, 19 I & N Dec. 582, 591-592 (BIA).

The issue in this proceeding is whether the applicant has established 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 1982 and lived in an unlawful status during the requisite period consists of several witness statements, and several documents. The AAO has reviewed each document in its entirety to determine the applicant's eligibility; however, the AAO will not quote each witness statement in this decision. Some of the evidence submitted indicates that the applicant resided in the United States after May 4, 1988; however, because evidence of residence after May 4, 1988 is not probative of residence during the requisite time period, it shall not be discussed.

The record contains witness statements from [REDACTED] the applicant's brother, [REDACTED] the applicant's brother, [REDACTED] the applicant's mother, [REDACTED] the applicant's brother, and [REDACTED] the applicant's sister.<sup>2</sup>

The applicant has submitted an undated statement from [REDACTED] who states that she has known the applicant since November 1987, when she met her at the home of a mutual friend, although the witness does not give the mutual friend's name or address. The witness states that she encouraged the applicant to apply for legalization some time before May 1988. The witness states that the applicant told her she was front-desked due to travel in November 1987. However, the testimony of the affiant is inconsistent with the testimony of the applicant in the I-687 application, in which the applicant states that she was absent from the United States for some period of time beginning in September 1987.<sup>3</sup>

The record contains an affidavit from [REDACTED] who states that he has known the applicant since 1986, when they were living in the same neighborhood and met in the home of a mutual friend although the witness does not give the mutual friend's name or address.

The record contains an undated statement from [REDACTED], who states that he has known the applicant since 1982, when a mutual friend introduced them at a party, although the witness does not give the mutual friend's name or the location of the party.

The applicant has submitted the affidavit of [REDACTED] who states that she has known the applicant since 1980.

The record contains the affidavit of [REDACTED], who states that he has known the applicant since 1983, at which time the applicant was working as a housekeeper for several of his friends. However, the testimony of the affiant is inconsistent with the testimony of the applicant in the

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<sup>2</sup> All of the witnesses appeared before the same notary, ten of them on the same day.

<sup>3</sup> On April 6, 2006 the applicant forwarded a "reconstructed" I-687 application, in which states that she was absent from the United States for some time in November 1987.

I-687 application, in which the applicant does not list any employment in the United States during the requisite statutory period.<sup>4</sup>

The applicant has submitted the affidavit of [REDACTED] the applicant's brother, who states that the applicant was absent from the United States for less than three weeks in December 1987. However, the testimony of the affiant is inconsistent with the testimony of the applicant in the I-687 application, in which the applicant states that she was absent from the United States for some period of time in September 1987.<sup>5</sup>

The applicant has submitted the affidavit of [REDACTED] who states that she has known the applicant since July 1980.

The record contains the affidavit of [REDACTED] who states that he has known the applicant since 1985 when mutual friends introduced them at a party, although the affiant does not give the names of the mutual friends or the location of the party.

The applicant has submitted the affidavit of [REDACTED] who states that she has known the applicant since 1986, when they were introduced by the applicant's mother.

The applicant has submitted the affidavit of [REDACTED] who states that he has known the applicant since 1984, at which time the applicant's mother worked for him.

Although the witnesses claim to have personal knowledge of the applicant's residence in the United States during the requisite period, the witness statements 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 in the United States during the requisite period. 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 it probably did exist and that the witness, by virtue of that relationship, does have knowledge of the facts alleged. For instance, affiants [REDACTED]

[REDACTED] and [REDACTED] do not state how they date their initial meeting with the applicant or specify social gatherings, other special occasions or social events when they saw and communicated with the applicant during the requisite period. In addition, none of the affiants states how frequently he or she had contact with the applicant during the requisite period. Therefore, the affiants do not provide sufficient details that would lend credence to their claimed knowledge of the applicant's residence in the United States during the

<sup>4</sup> On April 6, 2006 the applicant forwarded a "reconstructed" I-687 application, in which she lists employment in the United States as a housekeeper beginning some time in 1988.

<sup>5</sup> On April 6, 2006 the applicant forwarded a "reconstructed" I-687 application, in which states that she was absent from the United States for some time in November 1987.

requisite period. For these reasons the AAO finds that the witness statements do not indicate that their assertions are probably true.

The applicant has submitted a copy of the birth certificate of one of her children and her marriage certificate. The certificates reveal that the applicant was married in Mexico on July 7, 1983 and gave birth to a child there on December 18, 1983. This evidence is inconsistent with the applicant's testimony in the I-687 application in which she did not list any absences from the United States in 1983.<sup>6</sup>

The remaining evidence in the record is comprised of copies of the applicant's statements and the I-687 application. However, as stated previously, 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 the evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6). Here, the inconsistencies regarding the dates the applicant lived at a particular location within the United States and was absent from the United States are material to the applicant's claim in that they have a direct bearing on the applicant's 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 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. *Matter of Ho*, 19 I & N Dec. 582, 591-592 (BIA). The applicant has failed to provide probative and credible evidence of her continuous residence in the United States for the duration of 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. The various statements and affidavits currently in the record, which attempt to substantiate the applicant's residence in the United States during the statutory period, are not sufficiently probative to support the applicant's claim that she maintained continuous residence in the United States throughout the statutory 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 on this basis.

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

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<sup>6</sup> At the time of her interview the applicant corrected her I-687 application to include this information. In addition, on April 6, 2006 the applicant forwarded a "reconstructed" I-687 application, in which she included this information.