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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**

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FILE:

MSC 05 256 10190

Office: HOUSTON

Date: APR 01 2010

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:

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.

Perry Rhew  
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, Houston, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined that the applicant had not demonstrated that she had continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that she attempted to file a Form I-687, Application for Status as a Temporary Resident, with the Immigration and Naturalization Service or the Service (now United States Citizenship and Immigration Services or USCIS) in the original legalization application period between May 5, 1987 to May 4, 1988. Therefore, the director concluded that the applicant was not eligible to adjust to temporary resident status pursuant to section 245A of the Immigration and Nationality Act (Act) and the terms of the CSS/Newman Settlement Agreements and denied the application.

On appeal, counsel reiterates the applicant's claim of residence in this country for the required period and asserts that the applicant submitted sufficient evidence in support of such claim. Counsel claims that the director utilized an improper standard to evaluate the supporting documents contained in the record.

An applicant for temporary residence 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) and 8 C.F.R. § 245a.2(b).

An alien applying for adjustment to temporary resident status must 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 and 8 C.F.R. § 245a.2(b)(1).

For purposes of establishing residence and presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the alien attempted to file a completed Form I-687 application and fee or was caused not to timely file, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. See Paragraph 11, page 6 of the CSS Settlement Agreement and paragraph 11, page 10 of the Newman Settlement Agreement.

An alien applying for adjustment of status 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. *See* 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 including affidavits is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

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 "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 petitioner 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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to establish continuous residence in the United States for the requisite period. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on June 13, 2005. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, counsel indicated that the applicant lived at "[redacted]" in Houston, Texas from December 1981 to December 1993.

The record further shows that the applicant had previously asserted a claim to class membership in one of the legalization class-action lawsuits, and as such was permitted to file a separate Form I-687 application on July 12, 1990. At part #33 of the Form I-687 application (the difference in the numbering of parts on the two separate Form I-687 applications is explained by the fact that the application format was revised as of October 26, 2005) where applicants were asked to list all residences in the United States since first entry, the preparer listed the applicant's residences as [REDACTED] in Houston, Texas from December 1981 to the date this Form I-687 application was filed July 12, 1990.

The fact that the Form I-687 application filed on July 12, 1990 and the Form I-687 application filed on October 27, 2005, contain contradictory different and conflicting information relating to the applicant's address of residence during the requisite period raises questions regarding a critical element of her claim of continuous residence in the United States since prior to January 1, 1982.

In support of her claim of residence since prior to January 1, 1982, the applicant submitted five original envelopes containing Mexican postage stamps. However, these envelopes have no probative value as the envelopes do not contain discernible postmarks to determine the date such envelopes were purportedly mailed.

The applicant included two original rent receipts dated June 1985 and September 1987. Nevertheless, the receipts do not reference any specific address and all information on the receipts is hand-written.

The applicant provided two employment affidavits that are signed by [REDACTED] and [REDACTED]. It is evident that these are one and the same individual as the testimony within both affidavits is essentially the same. In her affidavits, [REDACTED] stated that she employed the applicant as a housekeeper at [REDACTED], in Houston, Texas for \$125.00 per week from 1987 to 1990. However, [REDACTED] failed to provide the applicant's address of residence during that period she employed the applicant as required by 8 C.F.R. § 245a.2(d)(3)(i).

The applicant submitted an employment affidavit dated July 10, 1990 that is signed by [REDACTED]. Mr. [REDACTED] provided the applicant's address of residence as of the date of the affidavit and noted that he employed the applicant as a housekeeper for at least two weekends per month since 1981.

The applicant included an affidavit signed [REDACTED] as well as two affidavits signed by [REDACTED]. Although both [REDACTED] and [REDACTED] attested to the applicant's residence in this country for the requisite period or a portion thereof, their testimony is general and vague and lacks sufficient detail and verifiable information to substantiate her claim of continuous residence in this country for the period in question.

The director determined that the applicant failed to establish her continuous residence in the United States for the requisite period. Therefore, the director concluded that the applicant was ineligible to adjust to permanent residence and most recently denied the Form I-687 application on February 9, 2009.

On appeal, counsel contends that the director erred when by characterizing minor discrepancies in testimony contained in the record as “material inconsistencies” as defined in *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Nevertheless, counsel’s assertion is without merit as the Form I-687 application filed on July 12, 1990 and the Form I-687 application filed on June 13, 2005, contain a material inconsistency, specifically contradictory and conflicting information relating to the applicant’s address of residence during the requisite period. Further the director’s characterizations are considered to be harmless error because the AAO conducts a *de novo* review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility and making a determination based upon a preponderance of the evidence as required by the regulation at 8 C.F.R. § 245a.2(d)(5) as well as the precedent decision reached in *Matter of E-- M--*, 20 I. & N. Dec. 77 (Comm. 1989).

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).

Counsel’s remarks on appeal regarding the sufficiency of evidence submitted by the applicant to demonstrate her residence in this country during the period in question have been considered. However, the record is absent sufficient supporting documents containing specific and verifiable testimony to substantiate the applicant’s residence in this country from prior to January 1, 1982 through the date she attempted to apply for legalization in the original application period from May 5, 1987 to May 4, 1988.

The absence of sufficiently detailed supporting documentation and the contradictory nature of the testimony regarding the applicant’s address of residence on the two Form I-687 applications contained in the record impairs the credibility of her claim of residence in this country for the period in question. Pursuant to 8 C.F.R. § 245a.2(d)(3), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. The applicant has failed to meet her burden of proof in establishing that she has either continuously resided in the United States since prior to January 1, 1982 or been continuously physically present in the country since November 6, 1986 by a preponderance of the evidence as required under both 8 C.F.R. § 245a.2(d)(3) and *Matter of E- M-*, 20 I&N Dec. 77 (Comm. 1989).

Given the applicant's reliance upon documents with minimal or no probative value, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through May 4, 1988 as required under section 245A the Act. 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.