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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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Services**

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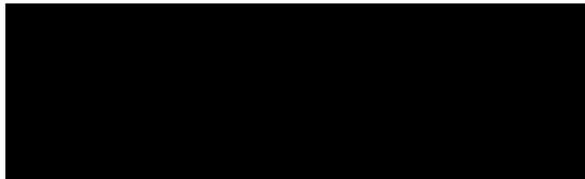
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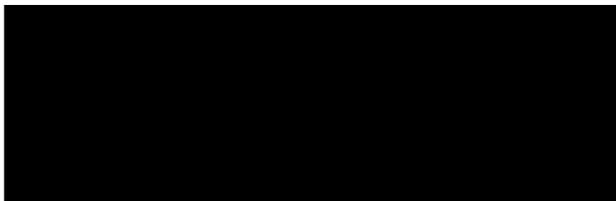
IN RE:

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

The director determined 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 the terms of the CSS/Newman Settlement Agreements and section 245A of the Immigration and Nationality Act (Act) and denied the application.

On appeal, counsel reiterates the applicant's claim of residence in this country for the required period and asserts the applicant submitted sufficient evidence in support of such claim.

An alien applying for adjustment to temporary resident status must establish that he or she entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through the date the application is filed. Section 245A(a)(2)(A) of the Act, 8 U.S.C. § 1255a(a)(2)(A), 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. 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 meet her burden of establishing continuous unlawful residence in the United States during the entire 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 USCIS on December 30, 2005.

In support of her claim of continuous residence in this country since prior to January 1, 1982, the applicant submitted affidavits, letters, a City of Dallas Birth Certificate, a State of Texas Marriage License, and vaccination records. This documentation in its totality is considered to be sufficient proof that the applicant resided in the United States from 1984 through the end of the requisite period on May 4, 1988. Consequently, the examination of the applicant's claim of

residence in the United States shall be limited to that period from prior to January 1, 1982 up until 1984.

The applicant provided an employment letter containing the letterhead of [REDACTED] in Dallas, Texas that is signed by human resources manager [REDACTED]. Ms. [REDACTED] stated that the applicant had been employed by [REDACTED] as housekeeping room attendant from October 3, 1983 to March 1, 1986. [REDACTED] noted that [REDACTED] was subsequently acquired by [REDACTED]. However, [REDACTED] failed to provide the applicant's address at the time of her employment with [REDACTED] and relevant information relating to the availability of business records reflecting the applicant's employment as required by 8 C.F.R. § 245a.2(d)(3)(i).

The applicant included affidavits that are signed by [REDACTED] and [REDACTED] respectively. Although these affiants attested to the applicant's residence in this country for the entire requisite period, 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 applicant submitted three affidavits, one of which is signed by [REDACTED] and dated August 5, 1993, while the remaining two are signed by [REDACTED] and dated January 30, 2004 and November 6, 2008, respectively. It is evident that [REDACTED] and [REDACTED] are one and the same individual as the content of the three affidavits is essentially identical and the affiant identified herself as the applicant's sister in each affidavit. In these affidavits, [REDACTED] declared that the applicant came from Mexico to live in her home beginning on June 3, 1981. [REDACTED] stated that she paid the applicant \$20.00 to \$30.00 in cash per week to care for her children at the house while she and her husband both worked until the applicant was able to obtain other work at [REDACTED] on October 3, 1983. [REDACTED] noted that the applicant subsequently moved out of her home on January 14, 1984 to move in with her boyfriend. However, the testimony of [REDACTED] is of limited probative value as it was general and vague and lacked specific, detailed, and verifiable information to substantiate the applicant's claim of residence in this country. Furthermore, it must be noted that [REDACTED] admitted that she is the applicant's sister and must be considered as an immediate family member with an interest in the outcome of these proceedings rather than a disinterested third party witness.

The director determined that the applicant failed to submit sufficient evidence demonstrating her residence in the United States in an unlawful status for the requisite period. Therefore, the director concluded that the applicant was ineligible to adjust to temporary residence and denied the Form I-687 application on February 18, 2009.

On appeal, counsel reiterates the applicant's claim of residence in this country for the required period and asserts the applicant submitted sufficient evidence in support of such claim. Counsel objects to the director's failure to contact the applicant's sister, [REDACTED] who had provided

supporting documents in order to verify her testimony. 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, as has been discussed above, the record is absent supporting documents containing specific and verifiable testimony from disinterested third party witnesses to substantiate the applicant's residence in this country from prior to January 1, 1982 up through 1984. Counsel fails to put forth any compelling reason that would warrant the verification of documentation that provides neither extensive nor credible information to corroborate the applicant's claim of residence.

The absence of sufficiently detailed supporting documentation seriously undermines the credibility of the applicant's claim of residence in this country for the requisite period, as well as the credibility of the documents submitted in support of such claim. 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 submit sufficient credible documentation to meet her burden of proof in establishing that he has resided in the United States since prior to January 1, 1982 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.