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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
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FILE: [Redacted]
MSC 05 040 21168

Office: LOS ANGELES

Date: FEB 02 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:

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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The applicant filed her current Form I-687, Application for Status as a Temporary Resident Under Section 245A of the Immigration and Nationality Act, and a Form I-687 Supplement, CSS/Newman (LULAC) Class Membership Worksheet, on November 9, 2004 which was approved on March 14, 2006. On June 18, 2008, the applicant's temporary resident status was terminated by the Director, Los Angeles. The decision to terminate is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The status of an alien lawfully admitted for temporary residence may be terminated at any time in accordance with section 245A(b)(2) of the Act if it is determined that the alien was ineligible for temporary residence under section 245A of the Act. 8 C.F.R. § 245a.2(u)(1)(i). Termination of the status of any alien previously adjusted to lawful temporary residence shall act to return such alien to the unlawful status held prior to the adjustment, and render him or her amenable to exclusion or deportation proceedings under section 236 or 242 of the Act, as appropriate. 8 C.F.R. § 245a.2(u)(4).

The director terminated the approval of applicant's temporary resident status because she did not establish that she continuously resided in the United States for the duration of the requisite period.

On appeal, the applicant acknowledges that the employment and residential histories shown on her Form I-687 she submitted in 1993 differs from the information provided on her Form I-687 she filed on November 9, 2004. She states that her 1993 was wrongly prepared by a notary and that she did not learn of the mistakes until after the documentation was filed. The applicant states that she is unable to present evidence for residence in the United States in 1985 and 1986 because she destroyed much supportive documentation after she was "front-desked" in April 1988. She submits additional documentation for consideration.

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)(1).

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)(1) 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 period, 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). To meet

his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her 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.* at 80. 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, 431 (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 request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, to deny the application.

The pertinent evidence in the record is described below.

1. Notarized statements from [REDACTED] and [REDACTED] who state they know the applicant resided in the United States since 1977.
2. Notarized statements from [REDACTED] and [REDACTED] who state they know the applicant has resided in the United States since 1980.
3. A notarized statement from [REDACTED] who states he knows the applicant has resided in the United States since 1984.
4. A notarized statement from [REDACTED] the applicant's sister, who states the applicant resided with her and her brother at [REDACTED] from September 28, 1984 to February 20, 1987, that the applicant moved to [REDACTED] California, on February 20, 1987, and moved back to the [REDACTED] address and lived there until December 1989.
5. A notarized statement from [REDACTED] who states she knows the applicant has resided in the United States since 1985.

6. A notarized statement from [REDACTED] who states he knows the applicant has resided in the United States since 1988.
7. The applicant's repurchase certificate disclosure statement dated February 17, 1982 that she sent to American Savings and Loan Association.
8. A letter from [REDACTED] and [REDACTED] of the Walter Reed Middle School in North Hollywood, California, who state they were not able to locate records for [REDACTED] because they were in the basement and sustained damage during the 1994 earthquake.
9. A school record dated May 1982 from the Los Angeles Unified School District showing [REDACTED] took two tests while in the fifth grade listing her mother as [REDACTED]
10. A school record for [REDACTED] for grades three, four and five from July 1980 through November 1981 from an unnamed school.
11. A school record for [REDACTED] showing her attendance at three schools in Los Angeles from May 14, 1980 to June 16, 1983.
12. A school record from Rio Vista Elementary School in North Hollywood, California, showing [REDACTED] attended Reed Junior High School from September 12 1983 to January 3, 1984.
13. Report cards for [REDACTED] for the 1982-1983 school year at Rio Vista issued in December 1982 and for the fifth grade issued May 1982.
14. The applicant's utility bill dated August 10, 1982 from Southern California Gas Company for an apartment unit in Los Angeles, California.
15. The applicant's IRS Form W-2, Wage and Tax Statement, from [REDACTED] [REDACTED] in Los Angeles, California, for 1982.
16. The applicant's IRS Forms 1040A, U.S. Individual Income Tax Return, for 1981 and 1983.
17. The applicant's Social Security Administration (SSA) earnings statement dated November 19, 2002, covering the years 1978 through 2001, showing she earned income reported to the SSA during 1980, 1982 and 1983.
18. The applicant's statement issued in lieu of a 1099 U.S. Information Return for calendar year 1983 issued by American Savings and Loan in Whittier, California, addressed to her at [REDACTED]

19. The applicant's notice of maturing savings certificate from American Savings and Loan Association showing a maturity date of May 7, 1984 addressed to her at [REDACTED]
20. The applicant's telegraphic money order receipt from Western Union in Los Angeles, California, showing she sent funds to a person in Mexico on May 18, 1984.
21. A telephone bill from Pacific Bell dated February 2, 1984.
22. The applicant's rent receipt for her apartment in Los Angeles, California, dated February 21, 1984.
23. The applicant's monthly bus passes for April, May and August 1984 showing her address in Los Angeles, California.
24. An envelope addressed to the applicant from a person in Mexico postmarked September 10, 1984.
25. The applicant's State of California identification card issued September 18, 1984.
26. A letter from [REDACTED] of American Savings and Loan Association in Los Angeles, California, who states the applicant maintained an account with the firm from March 2, 1981 until it was closed on September 26, 1984.
27. An unsigned letter from [REDACTED] in Los Angeles, California, who states the applicant has been treated at the clinic since December 1985.
28. A copy of the applicant's account from a firm named Family Practice in Los Angeles, California, showing billing activity from February 2, 1985 to May 30, 1988.
29. A Greyhound Lines bus ticket purchased May 31, 1986.
30. A receipt dated June 30, 1986.
31. An unsigned employment verification letter from [REDACTED] in Los Angeles, California, indicating the applicant has been employed by the firm since May 20, 1987.
32. Two pay stubs for [REDACTED] from [REDACTED] in Los Angeles, California, for pay periods ending April 10, 1987 and May 2, 1987.
33. The applicant's Form I-693, Medical Examination of Aliens Seeking Adjustment of Status, signed by [REDACTED] on August 3, 1987.

34. The applicant's State of California identification card issued August 6, 1987 under the name [REDACTED]

The persons providing the statements (Items # 1 through # 6 above) claim to have known the applicant for a substantial length of time, some since 1977. However, their statements are not accompanied by any documentary evidence such as photographs, letters or other documents establishing the affiants' personal relationships with the applicant in the United States during the 1980s. In view of these substantive shortcomings, the AAO finds that the statements 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 date he attempted to file a Form I-687 or was caused not to timely file during the original filing period from May 5, 1987 ending on May 4, 1988. Items # 7 through # 26 establish the applicant continuously resided in the United States since before January 1, 1982 through September 26, 1984. The letter from [REDACTED] (Item # 27) and the copy of the applicant's account (Item # 28) are of little probative value as neither is signed. The Greyhound Line ticket (Item # 29) and the receipt (Item # 30) are not specified to the applicant. Additionally, the employment verification letter has not been signed and does not provide the applicant's address at the time of employment and identify the location of company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable as is required of employment letters by 8 C.F.R. § 245a.2(d)(3)(i). The two pay stubs (Item #32) are questionable because they do not name the applicant as the employee.

On her Form I-687 dated May 20, 1993, the applicant stated that she resided at [REDACTED] from June 1977 to August 1984, at [REDACTED], from September 1984 to December 1987 and at [REDACTED] from January 1987 to July 1988. However, on her Form I-687 filed on November 9, 2004, she stated that she resided at [REDACTED] from January 1981 to September 1982, at [REDACTED] from September 1982 to September 1984, at [REDACTED] from September 1984 to February 1987 and at [REDACTED] in Los Angeles, California, from February 1987 to November 1987. Both of the Forms I-687 are at variance with the residence information provided by her sister in her notarized statement (Item # 4). On appeal, the applicant acknowledges that the residential histories shown on her Form I-687 she submitted in 1993 differs from the information provided on her Form I-687 she filed on November 9, 2004. She states that her 1993 application was wrongly prepared by a notary and that she did not learn of the mistakes until after the documentation was filed. However, she has submitted no evidence to support her assertions. As acknowledged by the applicant on appeal, her employment information varies significantly from her 1993 Form I-687 to her 2004 Form I-687.

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. Further, the applicant must resolve any inconsistencies in the record with competent, independent, objective evidence. Attempts to explain or reconcile such inconsistencies, absent competent objective evidence

sufficient to demonstrate where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). These inconsistencies cast doubt not only on the evidence containing the conflicts, but on all of the applicant's evidence and all of his assertions.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate entry into the United States prior to January 1, 1982, and continuous residence during the requisite period. The applicant's asserted residential and employment histories on her Form I-687 are accompanied by inconsistent evidence.

The evidence must be evaluated not by the quantity of evidence alone but by its quality. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility, and its amenability to verification. Given the absence of credible supporting documentation, the applicant has failed to meet his burden of proof and failed to establish continuous residence in an unlawful status in the United States during the requisite period. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act. The applicant's temporary resident status was correctly terminated. The director's decision is affirmed.

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