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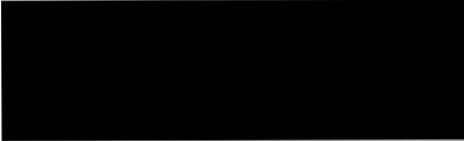
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



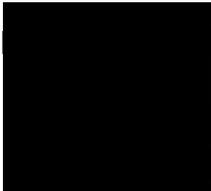
U.S. Citizenship and Immigration Services

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FILE:



Office: CHICAGO

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MSC-06 088 17144



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 J. 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 in Chicago, Illinois. 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 February 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 December 27, 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 counsel asserts that the director did not properly evaluate the documents submitted by the applicant in support of her application. In counsel's view, the evidence of record is sufficient to establish that the applicant meets the continuous residence requirement to adjust status under section 245A of the Act.

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.

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 (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 AAO determines that the applicant has failed to meet her burden.

The record reflects that the applicant has provided conflicting information and documentation regarding her entry into the United States and her continuous residence in the country through the requisite period. On a prior Form I-687 the applicant completed June 20, 1991, the applicant indicated the following as her employers during the relevant period:

- [REDACTED], from September 1981 to November 1984;
- [REDACTED] laborer, from January 15, 1985 to December 23, 1989; and

- [REDACTED], since January 3, 199.

On the Form I-687 the applicant filed on December 27, 2005, the applicant provided completely different employment information during the relevant period. The applicant indicated the following as her employers:

- [REDACTED], from September 1981 to November 1984;
- [REDACTED], from January 1985 to December 1989; and
- [REDACTED], from January 3, 1990 to 1995.

The discrepancies in the employment information and the applicant's failure to provide objective evidence to explain or reconcile the discrepancies cast some doubt to the veracity of the applicant's claim of continuous residence in the United States from before January 1, 1982 through the requisite period.

The record includes (1) an undated letter signed by [REDACTED] who identified himself as [REDACTED] stating that the applicant was employed from September 1981 to November 1984; (2) a letter dated May 2, 1981, by [REDACTED] who identified herself as [REDACTED] stating that the applicant was employed as general labor from January 15, 1985 to December 23, 1989; (3) an undated letter signed by [REDACTED] who identified himself as [REDACTED] stating that the applicant was employed as a waitress from January 15, 1985 to December 1989; (4) an undated letter by [REDACTED] stating that the applicant was employed as a cashier at [REDACTED] from September 1981 to November 1984; and (5) a letter signed by [REDACTED] who identified herself as [REDACTED] stating that the applicant was been employed as line operator since January 3, 1990.

Most of the letters listed above do not comport with the requirements at 8 C.F.R. § 245a.2(d)(3)(i). While the applicant submitted pay stubs from [REDACTED] dating from January 1990, as evidence of her employment in the United States from 1990, she provided no such documentation from her other claimed employers. The letters did not identify the applicant's address at the time of employment, did not declare whether the information was taken from company records, and did not indicate the location of such records and whether they are available for review. The letters are not accompanied by any pay stubs, earnings statements, or tax records from the applicant to show that she was actually employed during any of the years in question. Additionally, the letters are contrary to the employment information provided by the applicant on the two Form I-687 applications discussed above. Thus, the employment documents have limited probative value as credible evidence of the applicant's residence in the United States during 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. *See 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 (1) an undated letter from [REDACTED] of [REDACTED] in Chicago, Illinois stating the applicant has been attending some worship services and other activities off and on at the church since spring of 1981; and (2) an undated letter from [REDACTED] of [REDACTED] in Chicago, Illinois, stating that the applicant has been a registered parishioner, participated in church activities including attending services from the middle or early 1980s.

The letter listed above do not comport to the regulatory requirements at 8 C.F.R. § 245a.2(d)(3)(v), which specifies that attestations by religious and related organizations (A) identify the applicant by name, (B) be signed by an official (whose title is shown), (C) show inclusive dates of membership, (D) state the address where the applicant resided during the membership period, (E) include the organization seal impressed on the letter or the letterhead of the organization, (F) establish how the author knows the applicant, and (G) establish the origin of the information about the applicant. The letters did provide the specific period of the applicant's membership, did not indicate where the applicant lived during the period of her association with the churches, did not specify how and when the ministers met the applicant, and whether their information about the applicant was based on their personal knowledge, the churches' records, or hearsay. Since the letters did not comply with sub-parts (C), (D), (F), and (G) of 8 C.F.R. § 245a.2(d)(3)(v), the AAO concludes that they have little probative value as credible evidence of the applicant's continuous residence in the United States from before January 1, 1982 through the requisite period.

The record includes several envelopes which the applicant claimed were mailed to her at the addresses she claimed in the United States by individuals in Mexico. The envelopes have illegible postmark dates as if they were altered by hand and therefore very difficult to clearly discern when the envelopes were mailed. Although the applicant claimed that the envelopes were mailed to her during the 1980s, the envelopes do not bear United States Postal Service dates of other markings to show that the envelopes were received and processed in the United States before delivery to the applicant at the addresses indicated on the envelopes. Thus, the envelopes have limited probative value. They are not persuasive evidence of the applicant's continuous residence in the United States during the requisite period.

As for the letters and affidavits from individuals who claim to have rented an apartment to, resided with or otherwise known the applicant in the United States during the 1980s, they have minimalist or fill-in-the-blank formats. The authors provided very few details about the applicant's life in the United States and the nature and extent of their interactions with her over the years. The authors do not have direct personal knowledge of the events and circumstances of the applicant's residence in the United States. The letters and affidavits are not supplemented by any documentary evidence – such as photographs, letters, and the like – of the authors' personal

relationships with the applicant in the United States over the years. Furthermore, the authors did not provide documents to establish their own identities and residence in the United States during the requisite period. For all the reasons discussed above, the AAO concludes that the letters and affidavits 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 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.

Therefore, based upon the foregoing analysis of the evidence, 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