

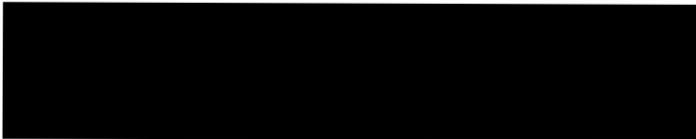
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



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Office: BALTIMORE

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MSC-08 243 11013 – APPEAL

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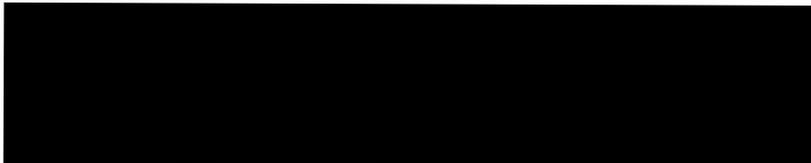
Applicant:



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.

A handwritten signature in black ink, appearing to read "Perry J. Rhew".

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 Baltimore, Maryland. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a native of Cameroon who claims to have lived in the United States since January 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 June 9, 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 applicant entered the United States before January 1, 1982, resided continuously in an unlawful status until December 1981, that the applicant briefly left the United States in December 1981, that she returned to the United States on January 1, 1982 and was admitted as an F-1 student. Counsel further asserts that the applicant violated her status as a student because she attended a University other than the one indicated on the F-1 visa and that she engaged in employment without authorization. Counsel contends that these actions placed the applicant in an unlawful status and that she is eligible to adjust status under section 245A of the Act.

Counsel asserts that the applicant violated her student status by engaging in an unauthorized employment, counsel however did not provide any documentation in support of his assertion. Contrary to the assertion of counsel, the record from the Social Security Administration (SSA) clearly shows that the applicant started earning income in the United States from 1984. Therefore, the record clearly shows that the applicant's employment in the United States began in 1984 and not in 1982 as claimed by counsel. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

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 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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. Here, the applicant has failed to meet her burden.

The record reflects that the applicant was admitted into the United States on January 1, 1982 with a valid F-1 student visa. The applicant proceeded to attend Benjamin Franklin School of Accounting in Washington, DC, from 1982 and graduated from the school in compliance with her student status. The applicant contends however, that she obtained an F-1 visa to attend Grandview College in Des Moines, Iowa, but that she attended Benjamin Franklin College instead, that her attending a different school constituted a violation of her student visa and placed her in an unlawful status. The record however, indicates otherwise. While the notation on the visa was for Grandview College, the record shows that the applicant had a valid Form I-20 for both Grandview and Benjamin Franklin University. The applicant attended Benjamin Franklin upon entry and therefore did not violate her student status. Thus, the applicant's claim is unfounded. Even if the applicant violated her student status in 1982, the applicant still has to establish her unlawful residence in the United States prior to January 1, 1982.

The applicant claims that she illegally entered the United States for the first time in January 1981, resided continuously in the country until November 1981, that she left the United States in November 1981, and that she returned to the United States on January 1, 1982 with an F-1 student visa. The applicant did not submit any objective documentation or credible evidence to establish her entry into the United States in January 1981. In the absence of any objective evidence pointing to the applicant's unlawful entry and residence in the United States before January 1, 1982, the applicant's documented lawful entry on January 1, 1982, is the first time the applicant entered the United States.

The documentation submitted by the applicant in support of her claim that she entered the United States before January 1, 1982, and resided continuously in the country in an unlawful status through May 4, 1988, consists of the following:

An undated "To Whom it May Concern" letter from _____ who identified himself as the _____, Washington, D.C. and Metropolitan Area, stating that the applicant had been a registered member of the association since her arrival in 1981.

An affidavit sworn to by [REDACTED] on September 19, 2001, attesting that the applicant was employed as a babysitter from March to November 1981 and from January to March 1982.

An affidavit sworn to on October 5, 2001 by [REDACTED] attesting that she has known the applicant in the United States since 1981, and that she spoke to her numerous times when she came to the United States in January 1 1981.

Two photocopied envelopes addressed to the applicant at the addresses she claimed in the United States during the 1980s.

The AAO has reviewed each document in its entirety to determine the applicant's eligibility.

The AAO notes that the applicant was admitted into the United States on January 1, 1982 with a validly issued F-1 student visa, and will accept documents submitted by the applicant in support of her residence in the United States from 1982 as credible evidence of the applicant's continuous residence in the United States from January 1982 onwards. The AAO will focus its review of documents in the record attesting to the applicant's residence in the United States prior to January 1, 1982.

The letter from [REDACTED] Washington, D.C. and Metropolitan Area does not comport with the regulatory requirements of 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 letter did provide the applicant's specific dates of membership, did not state the address where the applicant resided during the period of membership or at any other time during the 1980s, did not indicate how and when the author met the applicant, and whether his information about the applicant was based on the author's personal knowledge, the organizational records, or hearsay. Since the letter 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 it has little probative value. The letter is not persuasive evidence that the applicant entered the United States before January 1, 1982 and resided continuously in the county in an unlawful through May 4, 1988.

The photocopied envelope addressed to the applicant at [REDACTED] Washington, D.C. has an illegible postmark and unable to discern when the envelope was mailed. The photocopied envelope addressed to the applicant at [REDACTED] Alexandria, Virginia, bearing a postmark date that appears to read "Oct 81," does not appear to be genuine because the applicant indicated on the Form I-687 that she resided at that Alexandria, Virginia, address from August 1986 to September 1989. Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). None of the envelopes bear a United States Postal

Service marking to show that the envelopes were processed in the United States before delivery to the applicant. In view of the deficiencies and possible fraud, the envelopes have little probative value. They are not credible evidence of the applicant's residence in the United States prior to January 1, 1982.

As for the affidavits in the record from individuals who claim to have employed or otherwise known the applicant in the United States during the 1980s, they have minimalist formats with very few details about the applicant's life in the United States and the nature and extent of their interactions with the applicant over the years. The affidavits are not accompanied by any documentary evidence – such as photographs, letters, and the like – demonstrating the affiants' personal relationships with the applicant in the United States during the 1980s. The affidavit by [REDACTED] attests that she was aware of the applicant's residence in the United States but did not provide specifics about how and when she met the applicant, and for how long. The affidavit clearly shows that [REDACTED] did not have a direct personal knowledge of the events and circumstances of the applicant's residency in the United States during the 1980s.

[REDACTED] claims that she employed the applicant as a babysitter from March 1981 to November 1981, and again from January 1982 to March 1982. Neither [REDACTED] nor the applicant submitted any documentation such as copies of pay checks, or tax records to establish that the applicant was employed during the periods indicated. Most importantly, however, the applicant did not claim [REDACTED] as any of her employers in the United States on the Form I-687 (application for status as a temporary resident) she filed on June 9, 2005. Additionally, the copy of the SSA statement in the record shows that the applicant began earning income in the United States from 1984. None of the affiants submitted documentation to establish their identities and residence in the United States during the 1980s.

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. For all the reasons discussed above, the 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 May 4, 1988.

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, 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.