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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: DALLAS Date: **JAN 25 2010**
MSC-05 183 10659

IN RE: Applicant: 

APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of
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 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, or *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 Dallas, Texas. The matter 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 July 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 April 1, 2005. The director denied the application, finding (1) 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 and (2) that the applicant did not establish that she is a class member of the CSS/Newman (LULAC) lawsuits

On appeal the applicant asserts that she has submitted sufficient credible evidence to establish that she meets the continuous unlawful residence requirement for the duration of the requisite period.

The AAO notes that the director adjudicated the application on the merits and presumptively found the applicant eligible for class membership under the Terms of the CSS/Newman Settlement Agreements. Thus, the director's decision to deny the application on the ground that the applicant did not establish that she is a class member of the CSS/Newman (LULAC) lawsuits will be withdrawn.

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).

“Continuous residence” is defined at 8 C.F.R. § 245a.1(c)(1)(i) as follows: “An alien shall be regarded as having resided continuously in the United States if no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, through the date the application for temporary resident status is filed, unless the alien can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed.”

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 has furnished sufficient credible evidence to demonstrate that she resided continuously in the United States in an unlawful status from before January 1, 1982 through the date of filing the application or through the date she attempted to file a Form I-687 during the original one-year application period that ended on May 4, 1988. Here, the applicant has failed to meet her burden.

The AAO notes that the applicant, who claims to have entered the United States with her parents in July 1981, was only 12 years old when she allegedly entered the United States in 1981. The applicant did not submit any credible document to establish such entry. For someone claiming to have lived in the United States since 1981, it is noteworthy that the applicant did not submit any school or medical records, which is reasonable to expect from a child of 12 years residing in the United States in 1981. The applicant did not provide reasonable explanation why she is unable to provide the documents.

The applicant did submit several copies of an affidavit by [REDACTED] who identified herself as the applicant's mother. [REDACTED] stated that she and her husband brought the applicant to the United States illegally in July 1981, that the applicant resided at home with the family from July 1981 to December 1988, that she supported the applicant from July 1981 to July 1985, and that in December 1987, the family including the applicant traveled to Mexico on vacation and that the applicant alone returned to the United States.

The affidavit by [REDACTED] has minimalist format. [REDACTED] did not provide much details about the applicant's life in the United States, did not provide the address(es) where they resided during the 1980s, did not provide any documentation such as photographs or the like demonstrating her relationship with the applicant over the years. Furthermore, [REDACTED] did not provide any documentation to establish her own identity and residence in the United States during the 1980s. For all these reasons, the affidavit by [REDACTED] has little probative value. It is not persuasive evidence that the applicant entered the United State before January 1, 1982 and resided continuously in the country through the requisite period.

As for the remaining affidavits from individuals who claim to have known that the applicant resided in the United States from before January 1, 1982 through the requisite period, they have minimalist or fill-in-the-blank formats. The affiants provided very few details about the applicant's life in the United States and nature and extent of their interactions with the applicant over the years. The affidavits are not accompanied by documentary evidence – such as photographs, letters, and the like – of the affiants' personal relationships with the applicant in the United States during the 1980s.

The affiants do not seem to have a direct personal knowledge of the events and circumstances of the applicant's residence in the United States during the 1980s. Only one affiant claim to have known the applicant in the United States prior to January 1, 1982. While some of the affiants provided document to establish their own identities, none provided any documentation to establish their residence in the United States during the 1980s. For all the reasons discussed, the affidavits have little probative value. They are not persuasive evidence that the applicant entered

the United States before January 1, 1982 and resided continuously in an unlawful status 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 in the record, the AAO finds that 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.