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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
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**U.S. Citizenship  
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[REDACTED]

FILE: [REDACTED] Office: CHERRY HILL  
MSC 05 309 10162  
[MSC 07 005 12044 – Appeal]

Date: **JAN 28 2010**

IN RE: Applicant:

[REDACTED]

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:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the National Benefits Center. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

  
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, Cherry Hill, New Jersey. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined 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 for the applicant submits a brief statement.

The record shows that the applicant submitted a Form I-687, Application for Status as a Temporary Resident Under Section 245A of the Immigration and Nationality Act, on August 5, 2005. The director issued a Notice of Intent to Deny (NOID) the application on May 17, 2006, and a Notice to Deny (NOD) the application on June 19, 2006. An appeal from that decision (MSC 06 312 12438) was submitted by counsel on July 20, 2006. The appeal was returned to counsel as not containing sufficient information and was subsequently resubmitted ("filed") on August 8, 2006. The director reopened the proceedings and again denied the application on August 23, 2006. Counsel then submitted the current appeal on September 26, 2006. The appeal was returned as it did not have a required signature and was subsequently resubmitted ("filed") on October 5, 2006. The director rejected the appeal as having been filed after the required 30 – day period. The director has now reopened the proceedings and forwarded the appeal to the AAO.

The AAO maintains plenary power to review this matter 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 federal courts have long recognized the AAO's *de novo* review authority. *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)(1).

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).

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 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 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.

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). *See* 8 C.F.R. 245a.15(b). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant’s own testimony. 8 C.F.R. § 245a.12(f). Affidavits indicating specific, personal knowledge of the applicant’s whereabouts during the relevant time period are given greater weight than fill-in-the-blank affidavits providing generic information.

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 regulation at 8 C.F.R. § 245a.2(d)(3)(v), states that attestations from churches, unions, or other organizations should: identify the applicant by name; be signed by an official (whose title is shown); show inclusive dates of membership; state the address where the applicant resided

during the membership period; include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; establish how the author knows the applicant; and, establish the origin of the information being attested to.

The applicant, a native and citizen of Colombia, claims to have initially entered the United States without inspection near San Diego, California, on October 10, 1981, and to have departed the United States on only two occasions since that date – from June 5, 1987 to July 25, 1987, and from September 2, 1988 to October 10, 1988, in order to travel to Colombia and returning from each visit without inspection.

The issue in this proceeding is whether the applicant has furnished sufficient evidence to demonstrate that she resided in the United States in an unlawful status throughout the requisite time period.

A review of the record reveals that the applicant has submitted the following documentation in support of her claims:

Church attestation:

1. A letter dated March 22, 1990 from [REDACTED] of the Church of Sts. Peter and Paul in Bronx, New York, stating he had known the applicant since December 1981 when she attended a spiritual retreat on December 18, 19 and 20.

The above attestation does not comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(v). The information provided by the Vicar appears to be anecdotal rather than taken from church records. He does not indicate the applicant is a member of the church, nor does he provide her residence(s) at the time of attending the retreat through to the date the letter was written.

Employment letters:

2. A letter dated March 2, 1990 from [REDACTED] in Paterson, New Jersey, stating the applicant was employed as a secretary from November 1981 to April 12, 1987.
3. A letter dated March 12, 1990, from [REDACTED] in Paterson, New Jersey, stating the applicant had been employed since April 10, 1989.

The above letters do not comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(i) in that they fail to provide the applicant's address(es) at the time of employment; show periods of layoff; 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.

Regarding Departure:

4. A letter dated June 20, 1990 from [REDACTED], a surgeon at the Universidad de Antioquia in Medellin, Colombia, stating the applicant traveled to Medellin during the month of June 1987 due to her daughter's illness.
5. An undated letter from [REDACTED] identified as the president of Pam Tours Travel Agency, on letterhead stationery from Hispano Tours in Paterson, New Jersey, stating the applicant came to the office to purchase tickets from New York to Medellin (via Miami) on June 5, 1987 and September 2, 1988.

Affidavits:

6. Affidavits from [REDACTED] and her husband [REDACTED] stating they had known the applicant since January 1982 and that she was a babysitter for their children; [REDACTED] and her husband [REDACTED] stating they had known the applicant since shortly after she came to the United States in 1981; the [REDACTED]'s children [REDACTED] and [REDACTED] stating the applicant used to baby-sit for them and they had known her for as long as they can remember; [REDACTED] stating the applicant entered the United States in November 1981 and resided with him and his son [REDACTED] for approximately eight years; [REDACTED] stating he had known the applicant since 1981; and, [REDACTED] and her husband [REDACTED] stating they had known the applicant since 1981.

The affiants are generally vague as to how they specifically date their acquaintances with the applicant, how often and under what circumstances they had contact with the applicant throughout the requisite time period, and the statements lack details that would lend credibility to their claims. It is unclear as to what basis the affiants claim to have direct and personal knowledge of the events and circumstances of the applicant's residence in the United States throughout the requisite period. As such, the statements can be afforded minimal weight as evidence of the applicant's residence and presence in the United States since on or before January 1, 1982.

Other:

7. Objective documentation, such as earnings and bank statements, receipts, hospital records, and records relating to the applicant's daughter, dating from 1989 and forward.

Based on the documentation provided, the applicant has established her presence in the United States since in or around 1989. For the time period prior to January 1, 1982, through 1989, the applicant has provided no employment letters that comply with the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(i)(A) through (F), no utility bills according to the guidelines set forth in

8 C.F.R. § 245a.2(d)(3)(ii), no school records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iii), no hospital or medical records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iv), and no attestations from churches, unions, or other organizations that comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(v). The applicant also has not provided documentation (including, for example, money order receipts; passport entries; children's birth certificates; bank book transactions; letters of correspondence; a Social Security card; automobile, contract, and insurance documentation; deeds or mortgage contracts; tax receipts; or insurance policies) according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(vi)(A) through (K). The documentation provided by the applicant consists of third-party affidavits ("other relevant documentation"). These documents generally lack specific details as to how the affiants knew the applicant – how often and under what circumstances they had contact with the applicant – throughout the requisite time period, and are not supported by any corroborative documentation.

It is noted that the record contains a marriage certificate showing the applicant was married to [REDACTED] in Colombia on December 15, 1979, and that she has a daughter, [REDACTED] born in Colombia on September 15, 1980, who was admitted to the United States as a non-immigrant visitor for pleasure on December 12, 1992, with authorization to remain until June 11, 1993.

The record also reflects that the applicant, under her married name of [REDACTED] attempted to enter the United States on July 3, 1985, at Miami International Airport using a photo-substituted passport belonging to [REDACTED]. Her application for admission was withdrawn and she was voluntarily returned to Colombia on that date. However, as previously noted, the applicant claims to have entered the United States in October 1981, to have resided in the United States continuously since that date, and not to have departed the United States for the first time since entry in June 1987. This discrepancy in the applicant's submissions has not been explained and casts doubt on the credibility of her claims.

Doubt cast on any aspect of the evidence as submitted may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, it is incumbent on the applicant to resolve any inconsistencies in the record by independent objective evidence; any attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

Due to the discrepancies in the record noted above and the absence of documentation to corroborate the applicant's claim of continuous unlawful residence for the entire requisite period detracts from the credibility of her claim. 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 amenability to verification. It is concluded that the applicant has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982, through the date she attempted to file a Form I-687 application 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.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 245a.2(d)(5) of the Act.

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