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U.S. Citizenship and Immigration Services
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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: CHICAGO Date: JAN 29 2010

XLS-88 215 03199
MSC-09 101 10541 – APPEAL

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. 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 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 May 2, 1988. 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 documentation submitted by the applicant tin support of her claim. In counsel's view, the evidence in the record is sufficient to establish that the applicant meets the continuous residence requirement for the requisite period. Counsel submits photocopies of documents previously submitted in the record.

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 has furnished sufficient credible evidence to establish that she entered the United States before January 1, 1982 and resided continuously in the country in an unlawful status for the duration of the requisite period. Here, the applicant has failed to meet this burden.

In support of her application, the applicant submitted letters from alleged former employers, copies of W-2 Earnings Statements, copies of check stubs, as well as affidavits from individuals who claim to have rented an apartment to, or otherwise known the applicant in the United States during the 1980s. The AAO has reviewed each document in its entirety to determine the eligibility of the applicant.

The record includes (1) a notarized letter from ACI in Wheeling, Illinois, dated October 1, 1988, stating that the applicant was employed from February 1982 to February 1985 as a kitchen helper and was paid $4.00 per hour; (2) several copies of letters from Sybaris Pool Suites, stating that the applicant was employed at their Northbrook, Illinois, office from February 25, 1985 to October 17, 1991, first as a housekeeper and later was promoted to a housekeeping supervisor.

The employment letters listed above do not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(i) because they did not provide the applicant's address during the periods of employment, did not indicate whether the information was taken from company records, and did not indicate whether such records are available for review. Nor are the letters supplemented by earnings statements, pay stubs, or tax records from the applicant demonstrating that he was actually employed during any of the years claimed. For the reasons discussed above, the employment letters have limited probative value. They are not persuasive evidence that the applicant resided continuously in the United States from before January 1, 1982 through the requisite period.

The record includes copies of Form 1099-Miscellaneous Income from for 1982, addressed to the applicant at and copies of Form W-2 Wage and Tax Statements from in Chicago, Illinois, for 1983, addressed to the applicant at The employment documents listed above do not appear to be genuine because (1) the address listed for the applicant on the documents is inconsistent with the address claimed by the applicant on her Form I-687 for the same period, and (2) the applicant did not claim or as any of her employers in the United States during the 1980s. Thus, the employment documents have little probative values and cannot serve 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. *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 letters and affidavits in the record from individuals who claim to have rented an apartment to, or otherwise known the applicant in the United States during the 1980s, have minimalist or fill-in-the-blank formats with very few details about the applicant's life in the United States and the nature and the extent of their interaction with the applicant over the years. The authors do not seem to have direct personal knowledge of the events and circumstances of the applicant's residence in the United States during the requisite period. The letters and affidavits are not supplemented by any documentary evidence – such as photographs, letters, and the like – demonstrating the authors' personal relationships with the applicant in the United States during the years they claimed to have known him. The authors did not provide documents to establish their identities and residence in the United States during the requisite period.

claims that he was the manager of an apartment complex located at and that he rented an apartment to the applicant from 1982 to 1984. The affidavit is contrary to the residence information provided by the applicant on the Form I-687 she filed in 1988. The applicant indicated her addresses on the Form I-687 as follows:

- , from February 1981 to March 1985;
- , from March 1985 to October 1987; and
  , since October 1987.

The inconsistency noted above cast grave doubt on the credibility of the affidavit from as evidence of the applicant's residence in the United States during the requisite period as well as the credibility of the other letters and affidavits submitted by the applicant in support of her applicant. As previously indicated, doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See matter of Ho, id.* For all the reasons discussed above, the AAO finds 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 date of filing the applicant for legalization.

As noted above, the applicant has provided contradictory testimony and documents in support of her application. The applicant has failed to submit any objective evidence to explain or reconcile the discrepancies and contradictions in the record. Therefore, the reliability of the remaining evidence consisting of – a letter from First Congregational Church of Chicago, and an identity card from First National Bank of Wheeling, Illinois, – is suspect and not credible.

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 he is eligible for the benefit sought.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he 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.

The AAO notes that the applicant was arrested by the Police Department of Wheeling, Illinois for violation of Bail Bond. The actual court records are not currently contained in the record and the applicant's criminal history will not be used as a basis for dismissing his appeal.

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