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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

PUBLIC COPY

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[redacted]

FILE: [redacted] Office: ORLANDO Date: MAR 03 2010
MSC 05 222 10789

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 Rhew
Chief, Administrative Appeals Office

DISCUSSION: On May 10, 2005, the applicant filed her current Form I-687, Application for Status as a Temporary Resident Under Section 245A of the Immigration and Nationality Act, which was approved on January 23, 2006. On October 15, 2005, the applicant's temporary resident status was terminated by the Director, Orlando. The decision to terminate is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The status of an alien lawfully admitted for temporary residence may be terminated at any time in accordance with section 245A(b)(2) of the Act if it is determined that the alien was ineligible for temporary residence under section 245A of the Act. 8 C.F.R. § 245a.2(u)(1)(i). Termination of the status of any alien previously adjusted to lawful temporary residence shall act to return such alien to the unlawful status held prior to the adjustment, and render him or her amenable to exclusion or deportation proceedings under section 236 or 242 of the Act, as appropriate. 8 C.F.R. § 245a.2(u)(4).

On appeal, counsel states the applicant underwent an extensive interview process for her temporary residency in Orlando in which every piece of documentation was scrutinized and at no point did anyone suggest the applicant had left the country for more than 20 months. Counsel further states that the applicant submitted sufficient documentation to establish that she had resided in the United States on a continuous basis during the requisite period. Counsel argues that even if the director did grant the applicant her temporary residency in error, she should be equitably estopped from terminating the residency of his client due to misconduct.

The AAO is without authority to apply the doctrine of equitable estoppel to preclude a component part of United States Citizenship and Immigration Services from undertaking a lawful course of action that it is empowered to pursue by statute or regulation. *See Matter of Hernandez-Puente*, 20 I&N Dec. 335, 338 (BIA 1991). Accordingly, the AAO shall not to address counsel's equitable estoppel claim.

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).

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)(1) 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 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her 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.* at 80. 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 petitioner 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, 431 (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 request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, to deny the application.

The pertinent evidence in the record is described below.

1. The applicant's employee absentee reports dated December 24, 1981 and December 29, 1983 listing her as being employed as a care giver in Redwood City, California.

2. Redacted facility staffing worksheets dated April 1, 1982 and March 1, 1983 listing her as member of the staff at

3. The applicant's sign in sheet for the period from May 1 to May 15, 1985.

4. A redacted employee benefits chart dated June 30, 1985 from in Redwood City, California, showing September 3, 1981 as her "date hired."

5. The applicant's employee evaluation from an unnamed employer dated April 15, 1984.

6. A redacted employee benefits chart dated June 30, 1985 from in Redwood City, California, showing September 3, 1981 as her "date hired."

7. The applicant's receipts for a rental property in Redwood City, California, dated February 1, 1982, May 2, 1982, November 3, 1982 and December 1, 1982.

8. Pictures of the applicant in Disney World in Orlando, Florida.

9. A page from the applicant's Republic of The Philippines passport number containing a B-1/B-2 multiple entry nonimmigrant visitor visa issued to her at the American

Embassy in Manila, Philippines, on February 4, 1986. Her passport shows that she was admitted to the United States from abroad on February 15, 1986 at San Francisco, California.

10. A notarized statement from who states she knows the applicant has resided in the United States since 1986.

11. The applicant's receipt from a hotel in Tampa, Florida dated March 16, 1986.

12. The applicant's Eastern Airlines boarding pass dated November 31, 2007 for a flight from San Francisco, California, to Miami, Florida.

13. The applicant's Social Security Administration (SSA) statement dated August 29, 2003, showing earnings beginning in 1988.

14. An envelope addressed to the applicant in Miami, Florida, from a person in the Philippines postmarked January 7, 1988.

15. The applicant's request for an X-Ray examination to a doctor in Manchester, Kentucky, dated April 20, 1988.

16. A copy of the applicant's redacted IRS Form W-2, Wage and Tax Statement, from . in Manchester, Kentucky, for 1988.

The applicant's employee reports (Items # 1 through # 4 above) are of little probative value in this proceeding as they are unsigned and redacted. The redacted facility staffing worksheets dated April 1, 1982 (Item # 2) is questionable because the form that it was written on shows a revision date of November 1982. The applicant's employee evaluation (Item # 5) does not name the employer. The receipts for rental property (Item # 7) are not convincing evidence of her continuous residence in the United States during 1982.

On her Form I-687, the applicant was requested to list all absences from the United States since entry and did not indicate that she was absent from this country in February 1986. However, the record reflects that she was issued a B-1/B-2 nonimmigrant visitor visa at the American Embassy in Manila, Philippines, on February 4, 1986 (Item # 9). Absent evidence to the contrary, it is determined the applicant was in the Philippines on February 4, 1986 when she received her nonimmigrant visa and not residing in the United States from February 4, 1986 until she entered the United States at San Francisco on February 15, 1986. This entry in 1986 effectively broke the continuity of any illegal continuous residence and physical presence claimed by the applicant. Based on evidence such as the February 15, 1986 admission date in her passport (Item # 9) and her SSA statement showing her employment starting in 1988 (Item # 13), the AAO accepts that she was present in the United States for a part of the requisite period.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, the applicant must resolve any inconsistencies in the record with competent, independent, objective evidence. Attempts to explain or reconcile such inconsistencies, absent competent objective evidence sufficient to demonstrate

where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). These inconsistencies cast doubt not only on the evidence containing the conflicts, but on all of the applicant's evidence and all of her assertions.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate entry into the United States prior to January 1, 1982, and continuous residence during the requisite period.

The evidence must be evaluated not by the quantity of evidence alone but by its quality. 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 its amenability to verification. Given the absence of credible supporting documentation, the applicant has failed to meet his burden of proof and failed to establish continuous residence in an unlawful status in the United States during the requisite period. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act. The applicant's temporary resident status was correctly terminated. The director's decision is affirmed.

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