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U.S. Citizenship and Immigration Services
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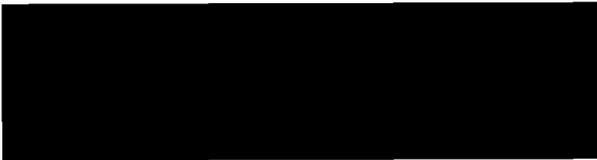
consolidated herein]
MSC 05 286 12080

IN RE: Applicant:



APPLICATION: Application for Temporary Resident Status under 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.

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) on 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) on February 17, 2004 (CSS/Newman Settlement Agreements), was denied by the director in Los Angeles, California. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application on the ground that the applicant failed to establish that she resided continuously in the United States in an unlawful status from before January 1, 1982 through the date of attempted filing during the original one-year application period for legalization that ended on May 4, 1988.

On appeal counsel asserts that the director did not properly consider the evidence of record, and submits additional documentation.

An applicant for temporary resident status under section 245A of the Immigration and Nationality Act (the Act) must establish his or her entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status from before January 1, 1982 through the date the application is filed. *See* section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2). The applicant must also establish his or her continuous physical presence in the United States since November 6, 1986. *See* 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. *See* 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 the regulation at 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 from May 5, 1987 to May 4, 1988. *See* CSS Settlement Agreement, paragraph 11 at page 6; Newman Settlement Agreement, paragraph 11 at page 10.

An applicant for temporary resident status has the burden to establish 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. *See* 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.

The regulations provide an illustrative list of documents – which includes affidavits and “any other relevant document” – that an applicant may submit as evidence of continuous residence in the United States during the requisite period under section 245A of the Act. *See* 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The applicant, who was born in Mexico on October 18, 1976 and claims to have lived in the United States since her mother brought her across the border as a one-year-old in October 1977, filed her application for temporary resident status under section 245A of the Act (Form I-687), together with a Form I-687 Supplement, CSS/Newman (LULAC) Class Membership Worksheet, on July 13, 2005.

On November 17, 2005, the director issued a Notice of Intent to Deny (NOID) indicating that the documentation of record – which included some photocopied school and health records – did not establish the applicant’s continuous residence and continuous physical presence in the United States during the requisite periods to qualify for temporary resident status under the Act. The applicant was given 30 days to submit additional evidence.

In response to the NOID the applicant submitted some additional photocopies of health (including immunization) records, school records, and rental statements.

On June 14, 2007, the director issued a Notice of Decision denying the application. The director determined that the evidence of record failed to establish the applicant’s continuous unlawful residence in the United States during the requisite period to qualify for temporary resident status under section 245A of the Act.

Counsel filed a timely appeal (Form I-694), asserting that the director did not properly consider the evidence of record. Counsel submits three new pieces of evidence – including a photocopied school record, a photocopied rental receipt, and a declaration by the applicant’s mother – and contends that the applicant has met her burden of proof because the record shows by a preponderance of the evidence that the applicant met the applicable continuous residence requirement.

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).

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 she attempted to file a Form I-687 during the original one-year application period for legalization that ended on May 4, 1988. The AAO determines that she has not.

As evidence of her continuous residence in the United States during the years 1977-1988, the applicant has submitted the following documentation:

- A series of photocopied health records recording numerous vaccinations and medical examinations in the period from April 1977 to December 1983.
- A series of photocopied school records with an assortment of data over the years 1981 to 1988.
- Photocopied rental receipts dated January 26, 1981, and February 2, 1983.

The documents referenced above contain various discrepancies and conflicts that raise serious questions about their authenticity. For example, one of the health records – a California School Immunization Record dated January 25, 1982 – records the applicant's initial polio and DPT inoculations as having been administered in California in the months of April and June 1977, which was before the applicant claims to have entered the United States from Mexico in October 1977.

As for the school records, the applicant submitted two documents on Compton Unified School District letterhead – one dated December 9, 2005, and the other dated July 24, 2007 – with inconsistent information about the applicant's school history. The 2005 document lists the applicant as attending [REDACTED] in the academic years 1981-82 and 1983-84, followed by [REDACTED] in 1985-86 and [REDACTED] in 1987-88. (The document does not list any schools for the intervening academic years of 1982-83, 1984-85, and 1986-87.) The 2007 document lists the applicant's schools as [REDACTED] from 1981 to June 1985 and [REDACTED] from 1985 to June 1988 (with no mention of [REDACTED]). While both documents purport to be certified statements of the District/School Custodian of Records, the 2005 document bears no signature of any kind and the 2007 documents bears a photocopied stamp and signature which, judging by their poor quality,

appear to have been affixed to the document after the fact. The other school records in the file cover only some of the years between 1981 and 1988, and contain the applicant's academic record for only two school years: 1983-84 and 1985-86.

With regard to the rental receipts dated January 25, 1981 and February 2, 1983, they identify the renter as the applicant's mother, [REDACTED] and the residential address as [REDACTED] in 1981 and [REDACTED] in 1983, without identifying the town or city on either form. The applicant's mother also neglected to complete this missing address information in her declaration of August 3, 2007, submitted in support of the appeal, in which she stated vaguely that she and her daughter resided in different locations in southern California during the late 1970s and 1980s, including Palmdale, Compton, Lynwood, and Indio. In any event, the incomplete residential addresses on the 1981 and 1983 rental receipts conflict with the information the applicant provided on her Form I-687, where she listed her U.S. address from July 1981 to August 1988 as [REDACTED] in Calexico, California.

The applicant has provided no explanation for the numerous evidentiary inconsistencies discussed above. Nor has she submitted any original documents to help validate the authenticity of the photocopied versions in the record.

It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies will not suffice without competent 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 the applicant's remaining evidence. *See id.*

Based on the foregoing analysis of the evidence, the AAO concludes that the applicant has failed to carry her burden of proof in this case. She has failed to establish, by a preponderance of the evidence, that she resided continuously in the United States in an unlawful status during the years 1981 to 1988.

Thus, the applicant has failed to establish her continuous unlawful residence in the United States from before January 1, 1982 through the date she attempted to file a Form I-687 during the original one-year application period for legalization that ended on May 4, 1988. Accordingly, the applicant is ineligible for temporary resident status under section 245A of the Act.

The appeal will be dismissed, and the application denied.

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