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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: DALLAS

Date:

FEB 24 2011

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: 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 of the Dallas office. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant 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 (LULAC) Class Membership Worksheet. 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. Specifically, the director denied the application because the applicant did not provide a list of the dates of her absences from the United States since the date of her initial entry into the United States. The director found that the applicant abandoned the application, by failing to timely respond to a request for additional evidence (RFE) issued on February 3, 2006. The director incorrectly denied the application based on abandonment pursuant to 8 C.F.R. § 103.2(b)(13).¹ In addition, a review of the RFE reveals that the director did not clearly indicate what additional evidence the applicant was requested to provide. However, the director's errors are harmless because the AAO conducts a *de novo* review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(d)(6).²

Counsel filed a motion to reopen/reconsider the proceeding, requesting an opportunity to provide a listing of the dates of the applicant's absences from the United States. However, motions to reopen a proceeding are not permitted under section 245A of the Act. Therefore, the AAO will treat counsel's motion to reopen as an appeal. The applicant has not submitted any additional evidence on appeal.

On December 30, 2010, the AAO sent the applicant a follow-up communication informing her that additional documentation was required in order to complete the adjudication of her appeal, and requesting that the applicant provide additional evidence. Specifically, the AAO requested that the applicant provide a statement of all of her absences from the United States since her stated entry into the United States in 1978 throughout the requisite period, including the country to which she travelled and the purpose of the trip. The AAO also requested that the applicant provide additional evidence to document her absences from the United States, throughout the requisite period. The applicant did not respond to the AAO's request.

¹ On December 14, 2009, the United States District Court for the Eastern District of California ruled that United States Citizenship and Immigration Services (USCIS) may not apply its abandonment regulation, 8 C.F.R. § 103.2(b)(13), in adjudicating legalization applications filed by CSS class members. See, *CSS v. Michael Chertoff*, Case 2:86-cv-01343-LKK-JFM.

² The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

The AAO has reviewed all of the evidence, and has made a *de novo* decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.

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) 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. 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. *Matter of Ho*, 19 I & N Dec. 582, 591-592 (BIA).

The issue in this proceeding is whether the applicant has established that she (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. The documentation that the applicant submits in support of her claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of documents. The AAO has reviewed each document in its entirety to determine the applicant's eligibility. Some of the evidence submitted indicates that the applicant resided in the United States after May 4, 1988; however, because evidence of residence after May 4, 1988 is not probative of residence during the requisite time period, it shall not be discussed.

The record contains documents addressed to the applicant, concerning the purchase of a Dunkin' Donuts franchise, dated January 27, 1982, September 17, 1982 and September 23, 1982. The applicant submitted a statement from the Social Security Administration, stating that her social security number was issued on March 23, 1982. The applicant has submitted a Pennsylvania insurance identification card dated February 8, 1982. The record contains a copy of an application for a Pennsylvania learner's permit, signed by the applicant on or about April 2, 1982. The applicant has submitted a New York Life insurance policy statement dated August 5, 1982, and copies of medical bills dated November and December 1982. These documents are some evidence in support of the applicant's residence in the United States for some part of 1982.

The record contains copies of checking account statements for account numbers [REDACTED]. Statements for account [REDACTED] residence from February 24, 1982 through September 4, 1982 on [REDACTED], and from October 5, 1982 to January 8, 1983 on [REDACTED]. In the instant I-687 application, and in an I-687 application filed in 1989, the applicant does not list a residence on [REDACTED]. Statements for account number [REDACTED] list the applicant's residence from August 2, 1982 to January 8,

1983 on [REDACTED]. The overlapping dates are incongruous. There are contradictions as to when and where the applicant resided. Further, the record contains copies of three checks signed by the applicant in June and October 1982, listing the applicant's residence in Dubois, Pennsylvania. The applicant has submitted vehicle registration cards dated June 25, 1982, and December 9, 1982, respectively, listing the applicant's residence in Dubois, Pennsylvania. These documents are inconsistent with the testimony of the applicant in the instant I-687 application, and in the I-687 application filed in 1989, in which the applicant states that she only resided in Pennsylvania until February 1982. Due to these inconsistencies, these documents will be given no weight.

The record contains copies of checking account statements for account number [REDACTED] with The Williamsburgh Savings Bank in Brooklyn from January 9, 1983 to November 9, 1983, and for account number [REDACTED] for February and March 1983. The applicant has submitted a copy of a lease for premises on [REDACTED] dated May 18, 1983. The applicant submitted several bills dated January, June, July, and September through December 1983. The record contains copies of documents dated June 1983 and October 1983, regarding the applicant's purchase [REDACTED]. The applicant has submitted a letter dated August 1983 from Prudential Insurance Company. The record contains a mortgage disclosure statement and settlement sheet dated September 1983, and a check dated December 1983. These documents are some evidence in support of the applicant's residence in the United States for some part of 1983.

The applicant has also submitted a Pennsylvania insurance identification card dated February 8, 1983, listing the applicant's residence in Dubois, Pennsylvania. This document is inconsistent with the testimony of the applicant in the instant I-687 application, and in the I-687 application filed in 1989, in which the applicant states that she only resided in Pennsylvania until February 1982. Due to these inconsistencies, this document will be given no weight.

The applicant has submitted copies of bills dated January through July 1984 and checks dated May, June, July, September and October 1984. The applicant has submitted a copy of a savings account booklet, listing transactions on the applicant's savings account with The Williamsburgh Savings Bank from August 2, 1982 to September 6, 1984. The applicant has submitted copies of a bank statement from Citibank account number [REDACTED] from September 7, 1984 to November 6, 1984. These documents are some evidence in support of the applicant's residence in the United States for some part of 1982 through 1984.

The applicant has submitted copies of checking account statements for account number [REDACTED] with The Williamsburgh Savings Bank from August 9, 1984 to November 8, 1984, listing the applicant's residence on [REDACTED]. The applicant has submitted copies of a bank statement from Keystone National Bank account number [REDACTED] for November 5, 1984, listing the applicant's residence as Dubois, Pennsylvania. These documents are inconsistent with the testimony of the applicant in the instant I-687 application, and the I-687 application filed in 1989, in which the applicant states that only she resided in

Dubois, Pennsylvania until February 1982, and on Ingram in Forest Hills from September 1983 to December 1984. Due to these inconsistencies, these documents will be given no weight.

The record contains copies of correspondence from New York Life Insurance Company dated January 20, 1985 and July 20, 1985. These documents are some evidence in support of the applicant's residence in the United States for some part of 1985.

The applicant has submitted copies of bank statements from Keystone National Bank account number [REDACTED] for January and February 1985, listing the applicant's residence as Dubois, Pennsylvania. The applicant has also submitted copies of correspondence from New York Life Insurance Company dated March 1, 1985, August 29, 1985, January 20, 1986 and March 3, 1986, listing the applicant's residence on [REDACTED]. These documents are inconsistent with the testimony of the applicant in the instant I-687 application, and in the I-687 application filed in 1989, in which the applicant states that she only resided in Dubois, Pennsylvania until February 1982, and does not list a residence on [REDACTED]. Due to these inconsistencies, these documents will be given no weight.

The applicant has submitted copies of two checks payable to her, dated May and June 1987. These documents are some evidence in support of the applicant's residence in the United States for some part of 1987.

While some of the above documents indicate that the applicant resided in the United States for some part of the requisite period, considered individually and together with other evidence of record, they do not establish the applicant's continuous residence for the duration of the requisite period.

The remaining evidence in the record is comprised of copies of the applicant's statements, the instant I-687 application, the initial I-687 application, filed in 1989 to establish the applicant's CSS class membership, and a Form I-485, application to adjust to permanent resident status under the Legal Immigration Family Equity (LIFE) Act. The AAO finds in its *de novo* review that the record of proceedings contains materially inconsistent statements from the applicant regarding her residences in the United States and her absences from the United States during the requisite statutory period.

At the time of completing the instant I-687 application, the applicant listed residences in the United States beginning in December 1980 as follows: from December 1980 to February 1982 in Dubois, Pennsylvania; and, from March 1982 through the end of the requisite period in Forest Hills, New York. At number 32 of the application, where the applicant was asked to provide a list of her absences from the United States since the date of her initial entry into the United States, she stated that she has taken various trips since January 1982.

In a class member worksheet dated November 13, 1989, the applicant stated that she first entered the United States in 1978.

In the initial I-687 application, filed in 1989 to establish her CSS class membership, at part 35 the applicant stated that she has had various departures as shown in an attached passport. She listed residences in the United States as follows: from February 1981 to February 1982 in Dubois, Pennsylvania; and, from March 1982 to June 1987 in Forest Hills, New York. The applicant did not list any residence in the United States from June 1987 through the end of the requisite period.

In a supplemental statement filed with the initial I-687 application, the applicant stated that she initially entered the United States with an Indian passport containing a visitor's visa. The applicant stated that she obtained a visitor's visa in 1981. She stated that in 1985 she received a British passport and turned in her Indian passport. She also stated that she left the United States in 1987, and that she again left the United States on or about April 15, 1988 to obtain an E-2 visa in London.

The records of United States Customs and Border Protection (USCBP) reveal that the applicant entered the United States on March 28, 1988 and departed the United States on April 19, 1988.

The record contains a copy of several pages of the applicant's British passport number [REDACTED] obtained in London on September 5, 1985. The passport reveals that the applicant obtained a visitor's visa in London on September 6, 1985. The passport also reveals that the applicant was in Portugal from August 24, 1986 to August 31, 1986. However, the passport copy is missing pages 14, 15 and any pages after page 19. The applicant has not produced a copy of the Indian passport with which she initially entered the United States, and she has not stated whether she retained a copy of that passport. The record does not contain a copy of any other passport with which the applicant traveled during the requisite period.

The applicant has failed to provide probative and credible evidence of her continuous residence in the United States for the duration of the requisite period. The inconsistencies regarding the dates the applicant resided at a particular location in the United States and was absent from the United States are material to the applicant's claim, in that they have a direct bearing on the applicant's residence in the United States during the requisite period. No evidence of record resolves these inconsistencies. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence pointing to where the truth lies. 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. *Matter of Ho*, 19 I & N Dec. 582, 591-592 (BIA). These contradictions undermine the credibility of the applicant's claim of entry into the United States prior to January 1, 1982 and continuous residence in the United States during the requisite period.

The record reveals that on January 24, 2007, removal proceedings were instituted against the applicant based upon the applicant being inadmissible to the United States and excludable as an immigrant without an immigrant visa. See Section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (Act), as amended, 8 U.S.C. §1182(a)(7)(A)(i)(I). The status of those proceedings is not known.

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, 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.