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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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OFFICE: HOUSTON

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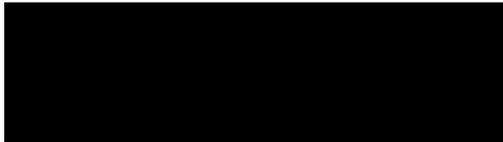
IN RE:

Applicant:



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:



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 director of the Houston office terminated the temporary resident status of the applicant, pursuant to the terms of the CSS/Newman Settlement Agreements, finding the applicant to be ineligible for temporary resident status. 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). The director terminated the application finding the applicant failed to establish that she entered the United States prior to January 1, 1982, and resided in a continuous unlawful status until she attempted to file for legalization.

On appeal, counsel asserts that the applicant has resided continuously in the United States in an unlawful status from before January 1, 1982 through the requisite period. Counsel contends that the director's decision is in error. Counsel asserts that the applicant has submitted credible affidavits. 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.¹

The temporary resident status of an alien may be terminated upon the determination that the alien was ineligible for temporary residence. Section 245A(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1255a(b)(2)(A), and 8 C.F.R. § 245a.2(u)(i).

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 245(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

¹ The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

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).

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).

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 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 established 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. The documentation that the applicant submits in support of her claim to have arrived in the United States before January 1982 and resided in an unlawful status during the requisite period consists of affidavits from seven individuals claiming to know the applicant during the requisite period. The AAO has reviewed each document in its entirety to determine the applicant’s eligibility.

The affidavits from [REDACTED] are general in nature and state that they have known the applicant in the United States for a portion of the requisite period. The affiants fail to include specific details, such as the applicant’s address of residence during the time period addressed or an exact year of when they first met the applicant. The affidavits from [REDACTED], [REDACTED] are general in nature and state that they have knowledge of the applicant’s residence in the United States for portions of the requisite period. The above statements fail to establish the applicant’s continuous unlawful

residence in the United States for the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality; 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.

The affiants' statements fail to provide concrete information, specific to the applicant and generated by the asserted associations with her, which would reflect and corroborate the extent of those associations and demonstrate that they have a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the affidavits. To be considered probative and credible, witness statements must do more than simply state that a declarant knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Upon review, the AAO finds that, individually and together, the witness statements do not indicate that their assertions are probably true. Therefore, they have minimal probative value and will be given little weight as evidence in support of the applicant's claim of continuous residence in the United States during the requisite period.

The record contains a declaration from [REDACTED] at St. [REDACTED]. The declarant states that the applicant has been known in the parish community since 1978 and has participated in mass as well as other events. The declaration does not conform to regulatory standards for letters from organizations as stated in 8 C.F.R. § 245a.2(d)(3)(v). The declaration fails to state the address where the applicant resided during membership period, establish how the author knows the applicant, and establish the origin of the information being attested to. Lacking relevant details, the declaration provides minimal probative value as evidence in support of the applicant's claim.

The record also includes an affidavit from [REDACTED], the applicant's sister. The affiant states the applicant used the alias [REDACTED]. The affiant failed to provide any details to corroborate her claim and demonstrate that she has a sufficient basis for reliable knowledge about the applicant's alias during the requisite period. Given this, the affidavit provides minimal probative value as evidence in support of the applicant's claim to have used the above alias.

The record includes an employment letter from [REDACTED] of [REDACTED] & Son, Inc. The declarant states that [REDACTED] was employed full-time from March 1984 to September 1987. The employment letter fails to provide the applicant's name, provide the applicant's address at the time of employment, and state the applicant's duties as required under the regulations at 8 C.F.R. § 245a.2(d)(3)(i). Given this, the employment letter fails to provide probative value as evidence in support of the applicant's claim.

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. Upon a *de novo* review of all of the

evidence in the record, the AAO finds that the evidence submitted by the applicant has not established that she is eligible for the benefit sought.

Based upon the foregoing, the evidence submitted in support of the applicant's claim has been found to have minimal probative value as evidence of the applicant's continuous residence and presence in the United States for the duration of the requisite period. The applicant has failed to establish by a preponderance of the evidence that she continuously resided in an unlawful status in the United States from before January 1, 1982 through 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.