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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  
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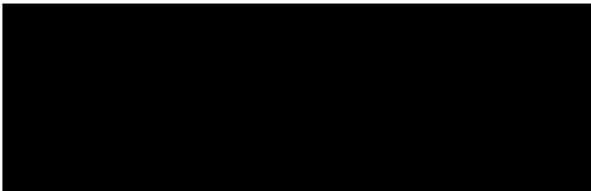


IN RE: Applicant:



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), and a Form I-687 Supplement, CSS/Newman (LULAC) Class Membership Worksheet. The director terminated the application because the applicant failed to establish that she entered the United States prior to January 1, 1982, and resided in a continuous unlawful status since that date through the requisite period. Specifically, the director determined that the submitted affidavits lacked credibility and the record contained inconsistencies regarding the applicant's address of residence during the requisite period.

On appeal, counsel for the applicant asserts that the director erred because when the evidence submitted is reviewed in its entirety, it is possible to conclude that [REDACTED] has established her eligibility under section 245A of the Act by a preponderance of the evidence. Counsel requests that the decision to terminate be reversed. 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.<sup>1</sup>

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.

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

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).

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 initially submitted 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 consisted of affidavits from nine 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 virtually identical affidavits from [REDACTED]

[REDACTED] are general in nature and state that the witnesses have knowledge of the applicant’s residence in the United States for all, or a portion, of the requisite period. These 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.

While the affiants state the year that they met the applicant, they 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. 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. To be considered probative and credible, the affiants' statements must do more than simply state that they know the applicant and that the applicant has lived in the United States since 1976. None of the affiants state they have any personal knowledge of the applicant's residence in the United States before 1981. In fact, six of the affiants state they did not meet the applicant until 1983 or later. 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.

In the Notice of Intent to Terminate (NOIT), the director stated that the applicant's January 25, 2010 sworn statement contradicts her statements on her Form I-687. In her Form I-687, the applicant stated that she was absent from the United States for about one month in 1984; whereas, in her sworn statement, she indicated an absence of several months to a year. Due to the inconsistency, the director determined that the applicant failed to establish her continuous residence in the United States during the requisite period. The applicant was granted thirty (30) days to submit evidence in rebuttal to the proposed termination.

In response to the NOIT, counsel submitted an affidavit from the applicant to reconcile the discrepancy. The applicant contends that, due to a lack of an interpreter, her January 25, 2010 statements were misunderstood. She states that she was absent from the United States for one month in September 1984 and provides a timeline of events during that time period. To meet her burden of proof, the applicant must provide evidence of eligibility apart from 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).

In support of her affidavit, the applicant submitted four affidavits from [REDACTED]. The affidavits from [REDACTED] indicate that the applicant was present in the United States before and after September 1984. These affidavits are general in nature and provide minimal probative value in support of the applicant's claim of a one month absence from the United States in September 1984.

The affidavit from [REDACTED] indicates that the applicant traveled to Guatemala for a short period of time in 1984 and that her son came to live with her after a year. While this affidavit supports the applicant's claim that her son came to live with her sometime in 1985, it fails to provide sufficient details regarding the dates of her absence, specifically the date of her return to the United States. Given this, the affidavit provides little probative value in support of the applicant's claim.

The applicant also submitted copies of her children's passport, photographs, and two operator licenses. The children's passport reflects that they were admitted to the United States in October 28, 1985. While this corroborates the applicant's statement that her son came to the United States about a year after he was born, it fails to provide little probative value regarding her date of return to the United States after her September 1984 departure. The copies of the photographs are undated and there is no independent verification as to the location of where these photos were taken. The applicant submitted copies of two operator licenses, which indicate a date of expiration in 1984 and 1988, respectively. While these documents establish the applicant's presence in the United States at some time prior to 1984 and 1988, respectively, they fail to provide probative value regarding the date of the applicant's return to the United States after her departure in September 1984. Upon review, the AAO finds that, individually and together, the above documentation has minimal probative value and fails to reconcile the inconsistency noted by the director.

The director also noted inconsistencies regarding the applicant's addresses of residences during the requisite period. The applicant's operator license that expired in 1984 indicates the applicant resided at [REDACTED]. The applicant's operator license that expired in 1988 indicates the applicant resided at [REDACTED]. These addresses are inconsistent with the applicant's Form I-687 (submitted with her Form I-690). In her Form I-687, the applicant stated that she resided at [REDACTED] from July 1979 to December 1979, at [REDACTED] from January 1980 to December 1987, and at [REDACTED] January 1988 to June 1988. On appeal, counsel submitted an amended list of the applicant's addresses during the requisite period and a brief explanation for the change. 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 unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Here, neither counsel nor the applicant submitted any independent, objective evidence to explain the above inconsistencies or to verify that the applicant resided at the addresses listed. Given this, the applicant has failed to reconcile the above inconsistencies.

Based upon the foregoing, the evidence submitted in support of the applicant's claim has been found to contain inconsistencies and to have minimal probative value as evidence of the applicant's residence and presence in the United States for 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.

Beyond the decision of the director, the applicant may not be eligible for temporary resident status pursuant to the terms of the agreements reached in the CSS/Newman Settlement Agreements because the record indicates that she is inadmissible under section 212(a)(6)(C)(i) of the Act.

The regulation at 8 C.F.R. § 245a.2(b) provides in pertinent part:

(b) Eligibility. The following categories of aliens, who are otherwise eligible to apply for legalization, may file for adjustment to temporary residence status:

(9) An alien who would be otherwise eligible for legalization and who was present in the United States in an unlawful status prior to January 1, 1982, and reentered the United States as a nonimmigrant, such entry being documented on Service Form I-94, Arrival-Departure Record, in order to return to an unrelinquished unlawful residence.

(10) An alien described in paragraph (b)(9) of this section must receive a waiver of the excludable charge 212(a)(19) as an alien who entered the United States by fraud.

The ground of excludability at section 212(a)(19) of the Act has been replaced by the ground of inadmissibility listed at section 212(a)(6)(C)(i) of the Act, as amended.

Upon reentry in 1984 and 1987, the applicant presented herself as a lawful nonimmigrant upon admission. Yet, according to the claims which the applicant made in this proceeding, her intent was to continue residing unlawfully in the United States and she was working unlawfully in the United States while on a visitor visa. Thus, the applicant procured entry into the United States by willfully misrepresenting a material fact. As such, she is inadmissible under section 212(a)(6)(C)(i) of the Act.

An applicant for adjustment of status under section 245A of the Act has the burden to establish by a preponderance of the evidence that she is admissible to the United States. *See* 8 C.F.R. § 245a.2(d)(5). The applicant might only overcome this particular ground of inadmissibility if she applies for and secures a waiver for the ground of inadmissibility at issue in the matter. *See* 8 C.F.R. § 245a.18(c). The record indicates that the applicant submitted the Form I-690, Application for Waiver of Grounds of Excludability, which is the form an applicant must file to request a waiver of the grounds of inadmissibility set forth at section 212(a)(6)(C)(i) of the Act. The applicant's Form I-690 application was approved on November 28, 2007.

However, given her failure to establish her continuous residence, the applicant is ineligible for temporary resident status under section 245A of the Act.

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