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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

L1

[redacted]

DATE: OCT 24 2011 Office: LEE'S SUMMIT FILE: [redacted]

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.

Elizabeth McCormack

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, Lee's Summit, Missouri. The director subsequently reopened the proceeding.[1] The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Following *de novo* review, the AAO found that that the director's basis for denial of the applicant's Form I-687 was in error. However, the AAO identified alternative grounds for denial of the application. Specifically, the AAO noted that the applicant failed to submit sufficient evidence in support of her application.

On June 27, 2011, the AAO sent the applicant a notice informing the applicant of the deficiencies in her application and providing the applicant with an opportunity to submit additional evidence to establish that she entered the United States before January 1, 1982, and that she continuously resided in the United States in an unlawful status since such date for the duration of the requisite period. The applicant was also granted a 30-day extension until August 17, 2011 to submit additional evidence. The applicant responded to the AAO's request.

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 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).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "until the date of filing" shall mean 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.

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[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 [redacted]

The applicant shall be regarded as having resided continuously in the United States if, at the time of filing no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred eighty (180) days during the requisite period, unless the applicant can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed. 8 C.F.R. § 245a.2(h)(1)(i).

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 throughout 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 lived in an unlawful status during the requisite period consists of affidavits and letters from previous employers. Some of the evidence submitted indicates 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 applicant claimed on her Form I-687 application that she resided in the United States since 1981. The evidence in the record does not establish an entry date for the applicant prior to January 1, 1982 and show that the applicant resided continuously in an unlawful status in the United States since that date and throughout the requisite period.

, , and attest to knowing the applicant and to knowledge of the applicant's residence in the United States since the 1980s. states that the applicant is his sister and that on completion of high school, the applicant left Bangladesh and entered the United States on October 20, 1981. states that he came to know of the applicant's arrival in the United States in 1987.

The witnesses fail to indicate any other details that would lend credence to their claimed acquaintance with the applicant and the applicant's residence in the United States during the requisite period. The affiants' statements are significantly lacking in detail concerning the events in their affidavits. The information given in the affidavits does not establish that the affiants actually had personal knowledge of the events and circumstances of the applicant's initial entry and residence in the United States. Overall, the affidavits provided are deficient in detail and can be given little significant probative value. Therefore, the applicant has not established that she entered the United States prior to January 1, 1982 and resided continuously in an unlawful status in the United States during the requisite period.

for the states that the applicant worked in the restaurant as a waitress from March 1985 to October 1988. , president of states that the applicant worked with the company as an office secretary from December 1981 to 1983. The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and, identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable. As the letters do not meet most of the requirements stipulated in the aforementioned regulation, they will be given nominal weight.

The applicant responded to the AAO's notice of deficiencies in the record on July 19, 2011. The applicant submitted a letter dated July 16, 2011 in which she states that she entered the United States on October 20, 1981 and resided in the United States continuously in an unlawful status until May 4, 1988. The applicant makes reference to the aforementioned affidavits she previously submitted and

requests that the AAO use the preponderance of evidence standard when considering these affidavits. However, 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-, supra*. The affidavits submitted are lacking detailed factual information about the applicant. The applicant also requests that the AAO take into account the passage of time and the difficulties in obtaining corroborative documentation of unlawful residence. The applicant states that although the affidavits were less in numbers and not drafted in corroborative fashion, the affidavits are credible. However, 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 applicant submitted six ticket stubs from different events the took place in the United States in 1984, 1985 and 1987, two receipts dated October 23, 1984 and December 26, 1987, and a Greyhound bus ticket dated May 1, 1985. However, as there are no names written on these documents, they cannot be identified as belonging to the applicant.

The letter from the Consulate General of Bangladesh dated July 8, 2011 certifies that the applicant previously traveled to the United States in October 1982. The applicant claims in her response and on her Form I-687 application that she entered the United States without inspection by crossing the border on October 20, 1981. No evidence of record resolves these inconsistencies. It is incumbent upon you to resolve any inconsistencies in the record by independent objective evidence. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The applicant also submitted a copy of her BlueCross BlueShield health insurance card issued in 1988. This is evidence of her residence for 1988.

The applicant states that she appeared for a brief interview on April 29, 1988, and gave an officer of the United States Citizenship and Immigration Services (USCIS) a copy of her supporting documents during the prescreening stage in order to determine her eligibility for legalization. The applicant states that no A number was assigned by USCIS on April 29, 1988. Therefore, USCIS would not be able to retrieve such documents and they would not be available for review by the AAO.

The applicant claims that she lost her immigration file on July 15, 2011 at a Starbucks Store. The applicant claims she filed a police report and has submitted such report with her response. However, the report does not identify what kind of property was lost. The applicant also states in her response that she did not save or store any documents. Accordingly, the applicant has failed to provide probative and credible evidence of her entry and 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. The evidence currently in the record is insufficient to establish the applicant's claim that she maintained continuous residence in the United States throughout the statutory period.

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.