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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**



[Redacted]

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Date: **APR 20 2012** Office: HOUSTON

[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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The applicant's temporary resident status was terminated by the Director, Houston. This 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) on June 12, 2002. The applicant was granted temporary resident status on December 18, 2003. On July 23, 2007, the applicant filed Form I-698, Application to Adjust Status from Temporary to Permanent Resident. The director determined that the Form I-698 was not timely filed and on August 1, 2007, issued a Notice of Intent to Terminate (NOIT) the applicant's temporary resident status and granted the applicant 30 days to submit evidence in rebuttal. In response to the director's NOIT, counsel stated that on May 25, 2005 he was informed by a United States Citizenship and Immigration Services (USCIS) officer that the Form I-698 had already been filed and approved. The director issued a subsequent NOIT on July 30, 2010 stating that the applicant had not established that she entered the United States prior to January 1, 1982 and her continuous unlawful residence in the United States for the duration of the requisite period. On February 25, 2011, the director terminated the applicant's temporary resident status, finding the applicant was not eligible for temporary resident status.

On appeal, counsel states that the applicant has established that she entered the United States prior to January 1, 1982 and her continuous unlawful residence in the United States for the duration of the requisite period.

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

Under the CSS/Newman Settlement Agreements, USCIS shall adjudicate each Form I-687 under the provisions of section 245A of the Act, regulations and administrative and judicial precedents which the Immigration and Naturalization Service (INS), now USCIS, followed in adjudicating the Forms I-687 timely filed during the Immigration Reform and Control Act of 1986 (IRCA) application period. *See* CSS/Newman Settlement Agreements.

An applicant who files for temporary resident status pursuant to the CSS/Newman Settlement Agreements 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 through the date of filing the Form I-687 during the original application period or through the date that the applicant attempted to file but was dissuaded from doing so by an agent of the INS. *See id.* and § 245A(a)(2)(A) of the Act.

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 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 first issue in this proceeding is whether the applicant 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.

In an attempt to establish continuous unlawful residence since before January 1, 1982 through the end of the relevant period, the applicant provided affidavits from [REDACTED] and [REDACTED]

In his affidavits, [REDACTED] states that he is an attorney and that on August 21, 1989 the applicant told him that she qualified under the “amnesty program, and that she made an attempt to have illegal status adjusted under the legalization program, but was informed at one of the legalization offices that she was not eligible.” Counsel does not have any personal knowledge of the applicant’s presence in the United States during the requisite period and met her after the end of the requisite period. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In his affidavit, [REDACTED] states that he has known the applicant since 1984 and that he met her through [REDACTED] states that the applicant cleaned houses including his own when he lived in West Covina, California. He further states that [REDACTED] and the applicant moved in with him in 1986 and that they subsequently all moved to Upland, California in 1988. This affidavit will be given some weight.

In her affidavit, [REDACTED] states that she met the applicant in 1984 in Miami and that the applicant was then working as a housekeeper. She states that she and the applicant kept in touch by telephone and that the applicant visited her in 1984 when she lived in Rosemead, California. [REDACTED] further states that the applicant cleaned her apartment and other people's homes, and that in 1986, she and the applicant moved in with [REDACTED] boyfriend in West Covina, California. [REDACTED] states that the applicant went to Tanzania to apply for a visa sometime in 1986 and in 1988, they all moved to [REDACTED] where the applicant resided until 1991. This affidavit will be given some weight.

In their affidavits, [REDACTED] provide similar accounts on the applicant's residence in California during the requisite period. The AAO notes that in her 2002 Form I-687, the applicant stated that she lived at [REDACTED] from 1986 to 1989 and at [REDACTED] 1989 to 1991. However, in a Form I-687 filed in 1989, the applicant listed one address at [REDACTED] from 1981 to the present. The applicant's 1989 and 2002 Form I-687 provide inconsistent information regarding where she lived during the requisite period and the affidavits are inconsistent with the applicant's 1989 Form I-687.

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. 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. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The affidavits contain statements that the affiants have known the applicant for years and that attest to the applicant being physically present in the United States during the required period. These statements fail, however, 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 witnesses' statements do not provide sufficient concrete information, specific to the applicant and generated by the asserted associations with the applicant, which would reflect and corroborate the extent of those associations and demonstrate that they were a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the affidavit. To be considered probative and credible, witness affidavits must do more than simply state that an affiant 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, the witnesses' statements do not indicate that their assertions are probably true. Therefore, they have little probative value.

The record of proceeding also contains a postmarked and stamped envelope dated November 14, 1985 and listing the applicant's name. This is some evidence that the applicant was in the United States in 1985. The AAO notes that the address listed for the applicant on the envelope is [REDACTED]. This address was not included in the applicant's 1989 Form I-687 or in her 2002 Form I-687.

The record also contains a photocopy of a residential lease signed by [REDACTED] for [REDACTED] from September 1, 1980 to August 31, 1982. The lease does not list the applicant's name and the address for the lease is not included in the applicant's 2002 Form I-687.

The AAO notes that the applicant was fourteen years old in 1981 and there is no evidence in the record of proceeding of her care and financial support as a minor during the requisite period.

Beyond the decision of the director, the AAO finds that the applicant was granted temporary resident status on December 18, 2003 under section 245A of the Immigration and Nationality (Act), as amended, 8 U.S.C. § 1255a. The applicant was required to file an application to adjust status from temporary to permanent resident on or before the end of the 43 months of receiving her temporary resident status, which was July 18, 2007. *See* 8 C.F.R. § 245a.3(b)(1).

Section 245A(b) of the Act states in pertinent part:

(2) Termination of Temporary Residence

The Attorney General shall provide for termination of temporary resident status granted an alien under subsection (a)-

(C) at the end of the 43rd month beginning after the date the alien is granted such status, unless the alien has filed an application for adjustment of such status pursuant to paragraph (1) and such application has not been denied.

Although counsel stated that on May 25, 2005 he was informed by a USCIS officer that the Form I-698 had already been filed and approved, there is no evidence in the record of proceeding that the applicant filed a timely Form I-698. The assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The applicant filed her application to adjust status from temporary to permanent resident on July 23, 2007, which is outside the statutory filing period. Pursuant to section 245A(b)(2)(C) of the Act, 8 U.S.C. § 1255a(b)(2)(C), a failure to file an application for adjustment to permanent residence within this statutory filing period will result in the termination of the applicant's temporary residence. *See* 8 C.F.R. § 245a.2(u)(1)(iv). The applicant is not eligible for temporary resident status for this additional basis.

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.