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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]

L1

DATE: **FEB 02 2012** Office: HOUSTON

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 McErmaek
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, Houston, Texas. 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 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 November 14, 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 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.

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

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.

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 applicant submitted in support of her claim to have arrived in the United States before January 1, 1982 and lived in an unlawful status during the requisite period affidavits and the immunization record of her child, [REDACTED]. The immunization record of [REDACTED] born on September 17, 1988, will not be taken into consideration. Evidence of residence after May 4, 1988 is not probative of residence during the requisite time period, and shall not be discussed.

The applicant claimed on her class membership determination form and initial Form I-687 application that she first entered the United States without inspection through Laredo, Texas, in November 1980. The applicant claimed on her current I-687 application that she resided in Houston, Texas from April 1981 to October 1983, and from December 1985 through the end of the requisite period. The applicant did not list any residences in the United States from October 1983 or 1984 to December 1985 on her initial and current I-687 applications. The applicant had the opportunity to explain these inconsistencies in response to the AAO's NOID, but she failed to do so.

The applicant submitted as proof of her asserted date of entry into the United States and continuous residence in the United States during the requisite period, witness statements from [REDACTED]

[REDACTED] who state that they have known the applicant for all or part of the requisite period. The witnesses also attest to the applicant residing in Texas during the requisite period. However, the statements of the witnesses lack sufficient detail, because they fail to provide concrete information specific to the applicant which would demonstrate that they have a sufficient basis for reliable knowledge about the applicant's residence in the United States during the requisite period. Although the witnesses claim to have personal knowledge of the applicant's residence in the United States during the requisite period, the witness statements do not 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 were a sufficient basis for reliable knowledge about the applicant's residence in the United States during the requisite period. To be considered probative and credible, witness statements must do more than simply state that a witness knows an applicant and that the applicant has lived in the United States for a specific period. Their content must include sufficient detail from a claimed relationship to indicate that it probably did exist and that the witness, by virtue of that relationship, does have knowledge of the facts alleged. For instance, the witnesses do not state how they date their initial meeting with the applicant in the United States, or specify social gatherings, other special occasions or social events when they saw and communicated with the applicant during the requisite period. The witnesses also do not state how they keep in contact with the applicant and how frequently they had contact with the applicant during the requisite period. The applicants generally attest to the applicant's good moral character rather than their relationship with the applicant during the requisite period. The AAO finds that the witness statements do not provide sufficient details that would lend credence to their claimed knowledge of the applicant's residence in the United States during the requisite period. For these

reasons, the AAO finds that the witness statements do not indicate that their assertions are probably true.

While an applicant's failure to provide evidence other than affidavits shall not be the sole basis for finding that he failed to meet the continuous residency requirements, an application which is lacking in contemporaneous documents cannot be deemed approvable if considerable periods of claimed continuous residency rely entirely on affidavits which are considerably lacking in certain basic and necessary information. The affiants statements are significantly lacking in detail and do 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. The affidavits do not provide much relevant information beyond acknowledging that they knew the applicant for all or part of the requisite period. Overall, the affidavits provided are so deficient in detail that they can only be given nominal probative value. USCIS is not required to contact affiants to verify the veracity of the testimony and to obtain additional evidence from the affiants. An applicant applying for adjustment of status under this part has the burden of proving by a preponderance of evidence that he or she is eligible for adjustment of status under section 245a of the Act. 8 C.F.R. § 245a.2(d)(5). 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.

The applicant submitted a copy of receipts from [REDACTED] dated May 15, 1987 and June 21 1987, respectively. The applicant's name appears on the receipts. The address of the merchant does not appear on the receipt from Jewelry Factory. The receipt from C J Sounds Unlimited, Inc. will be given some weight.

The applicant also submitted copies of her children's birth certificates showing that they were born on December 3, 1981 and May 23, 1983 in Houston, Texas. In its Noid, the AAO requested that the applicant produce evidence of her children's school attendance and vaccinations in the United States, if available.² The applicant responded to the AAO's notice of deficiencies in the record on December 5, 2011. The applicant states in her response letter dated December 1, 2011 that her paperwork was lost by the lady that took care of her children. The applicant also states that she was living with her husband and has nothing under her name. The applicant states that her only proof is her son's birth certificate and an employer's letter. The birth certificates will be given weight.

In response to the AAO's notice, the applicant submitted a copy of the immunization record for her child [REDACTED]. In the applicant's letter dated December 1, 2011, she stated that the original shot record of Ismael was lost. On the copy submitted, it appears that Ismael's name and date of birth were written on the copy and that the immunization record belongs to someone else as the first vaccination was given on January 29, 1998, 17 years after [REDACTED] was born. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. *Matter of Ho, supra.*

² The record contains an illegible copy of [REDACTED] vaccination record, but it appears to post-date the requisite period.

The record contains an employment letter dated December 10, 2005 from [REDACTED] owner of [REDACTED] stating that the applicant worked for him as a bartender from 1981 through 1988. The letter states that the applicant worked the night shift, permanent full time and her earnings were on a cash basis per week. 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 letter only states the exact period of the applicant's employment, it does not meet most of the requirements stipulated in the aforementioned regulation. Therefore, it will be given nominal weight.

In response to the AAO's notice, the applicant submitted a recent letter dated December 1, 2011 from [REDACTED]. The letter reiterates the same limited information given by the owner in his earlier letter. Therefore, it will be given nominal weight.

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.