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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals (AAO)
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**U.S. Citizenship
and Immigration
Services**



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DATE: **FEB 14 2012**

Office: LOS ANGELES

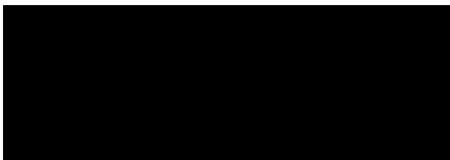
FILE: 

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. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

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 initially approved on August 24, 2005. The applicant's temporary resident status was subsequently terminated by the Director, Los Angeles on February 9, 2011. The termination decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record indicates that the applicant filed a Form I-687 Application for Temporary Resident Status on November 21, 2003. The application was approved on August 24, 2005. On March 24, 2011, the director terminated the applicant's temporary resident status noting that the applicant failed to respond to the director's notice of intent to terminate (NOIT). In his NOIT, the director noted many inconsistencies in the record of proceeding.

On appeal, through counsel, the applicant states that the evidence in the record comprised of affidavits and the applicant's statement is sufficient to establish that the applicant entered the United States before January 1, 1982 and resided continuously in the United States during the requisite period. Counsel asserts that the inconsistencies in the record are due to the applicant's confusion during the interview and her inability to understand the English-language interview without counsel's presence.

The status of an alien lawfully admitted for temporary residence under section 245A(a)(1) of the Act may be terminated at any time if it is determined that the alien was ineligible for temporary residence under section 245A of the Act. 8 C.F.R. § 245a.2(u)(1)(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 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 (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 of time.

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

The affidavits from [REDACTED], [REDACTED], [REDACTED] state that they have known the applicant since 1981 and that she has lived in the City of Los Angeles throughout this time. The affidavits do not provide any details about how the affiants met the applicant, whether they met the applicant in the United States or how they remember meeting the applicant in 1981.

In his affidavit, [REDACTED] states that he has known the applicant since 1980 and that she has since married and continues to reside in Los Angeles with her husband and children. [REDACTED] does not state how he first met the applicant.

The record contains two written statements from [REDACTED]. In his affidavit dated May 18, 2004, [REDACTED] states that the applicant is his niece and that she lived at his house at [REDACTED] from 1986 to 1989. [REDACTED] also states that the applicant lived in Los Angeles, California from October 1981 to the present. In his statement translated on June 14, 2004, [REDACTED] stated that the applicant came to live at his home at the age of 18. [REDACTED] states that the applicant did not like school and so she stayed at home and helped with chores. [REDACTED] states that the applicant lived with him beginning in September 1986 for three and half years. Finally, [REDACTED] states that they gave the applicant financial support. The address and dates provided by the affiant are consistent with the applicant's Form I-687 so the statements will be given some weight.

The record contains two written statements from [REDACTED]. In his affidavit dated May 18, 2004, [REDACTED] states that applicant lived with him from October 1989 to June 1994. [REDACTED] also states that when the applicant came to Los Angeles, she worked as a housekeeper for [REDACTED] at [REDACTED]. Finally, [REDACTED] states that the applicant lived in Los Angeles, California from October 1981 to the present. In his statement translated on June 14, 2004, [REDACTED] states that the applicant came to live with him in November 1989. In his June 14, 2004 statement, [REDACTED] provides no testimony regarding the applicant's presence in the United States during the relevant period. The AAO notes that in her Form I-687, the applicant stated that she was a homemaker and was never employed. The statements in [REDACTED] affidavit regarding her employment as a housekeeper for [REDACTED] are inconsistent with the applicant's statements on the Form I-687.

The record contains two written statements from [REDACTED]. In her affidavit dated May 18, 2004, [REDACTED] states that the applicant is her husband's niece and that she lived at his home at [REDACTED] when he was single.¹ [REDACTED] also states that the applicant lived in Los Angeles, California from October 1981 to the present. In her statement translated on June 14, 2004, [REDACTED] states that the applicant arrived in the United States in October 1981. Further, [REDACTED] states that she and her deceased husband also received the applicant when they lived at [REDACTED]. Finally, [REDACTED] states that the applicant worked with [REDACTED].

¹ The record contains evidence that [REDACTED] was in the United States during the requisite period. The evidence includes [REDACTED] Union Federal Savings and Loan Association book dated May 20, 1978 and issued on June 22, 1982 and checks signed by [REDACTED] and dated 1982, 1983, and 1985. The AAO notes that the record contains no evidence that the checks were cashed and that the address for [REDACTED] on the checks is [REDACTED], an address not listed in the applicant's Form I-687.

The AAO notes that [REDACTED] statements are inconsistent with applicant's Form I-687. [REDACTED] along with [REDACTED] both state that the applicant worked for [REDACTED] during the requisite period. In her Form I-687, the applicant stated that she was a homemaker and was never employed. Also, in both of her written statements [REDACTED] states that the applicant lived at [REDACTED] when she first arrived in the United States. However, the applicant lists her first address on the Form I-687 as [REDACTED] from 1981 to 1983. [REDACTED] statements regarding the applicant's employment and address are inconsistent with the applicant's Form I-687.

The record of proceeding contains two letters from churches. The record contains a letter on [REDACTED] letterhead dated July 28, 2003 and signed by [REDACTED]. The letter is written in Spanish and the record contains no English language translation for this letter. Because the applicant failed to submit a certified translation of the document, the AAO cannot determine whether the evidence supports the applicant's claims. See 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding. The AAO notes that in the Form I-687, the applicant listed her association with this church as beginning in 1993.

The record also contains a letter on [REDACTED] letterhead dated April 22, 2004 and signed by [REDACTED], [REDACTED]. In his letter [REDACTED] states that the applicant has been a member of the parish for "a good many years."

The regulation at 8 C.F.R. § 245a.2(d)(3)(v) provides requirements for attestations made on behalf of an applicant by churches, unions, or other organizations. Attestations must: (1) Identify applicant by name; (2) be signed by an official (whose title is shown); (3) show inclusive dates of membership; (4) state the address where applicant resided during membership period; (5) include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; (6) establish how the author knows the applicant; and (7) establish the origin of the information being attested to.

[REDACTED] letter does not comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(v) because it does not: include the dates of membership; state the address where the applicant resided during his membership period; establish in detail that the author knows the applicant and has personal knowledge of the applicant's whereabouts during the requisite period; establish the origin of the information being attested to; and indicate that membership records were referenced or otherwise specifically state the origin of the information being attested to. For this reason, the letter is not deemed probative and is of little evidentiary value. Further, the AAO notes that the information in [REDACTED] letter is inconsistent with the applicant's Form I-687. The applicant did not list [REDACTED] in the 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 declarations contain statements that the declarants 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 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, without more, do not indicate that their assertions are probably true.

In his Notice of Intent to Terminate (NOIT), the director stated that during her interview, the applicant stated that she did not sign a statement in which lists her last name as [REDACTED]. The applicant stated that she told counsel that the name was incorrect and that counsel failed to correct the typo. Further, the applicant stated that the information contained in the statement was also incorrect. During the interview, the applicant signed a handwritten statement indicating that she did not leave the United States for Mexico from 1981 to 2005. The applicant also stated that she did not apply for the general amnesty because she did not know about it and because she was alone until her uncle's supported her.

On appeal, counsel argues that during the interview, the officer dictated the applicant's written statement. The AAO notes that the applicant's handwritten statement is written in Spanish and contains a translation in English written by [REDACTED]. There is no evidence in the record that the officer dictated the statement to the applicant in Spanish. 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).

Counsel asserts that the inconsistencies in the record are due to the applicant's confusion during the interview and her inability to understand the English-language interview without counsel's presence. The AAO notes that there is evidence in the record that the applicant attended the interview with an interpreter. The record contains a form signed by the applicant and her

interpreter, [REDACTED], on January 4, 2011 and a photocopy of [REDACTED] California driver's license. The form states that that applicant relieves BCIS, now USCIS, of any responsibility associated with the translation of her interview. In the form, [REDACTED] stated that she was fluent in Spanish and English. [REDACTED] was present during the applicant's interview and signed and translated the applicant's handwritten statement into English. The record also contains a waiver signed by the applicant stating that she wanted to proceed with the interview without the presence of counsel.

In his NOIT, the director noted many inconsistencies in the record of proceeding. On appeal, counsel does not address the director's concerns regarding the affidavits in the record of proceeding.

On appeal, counsel suggests that the director's adjudication of the application was unfair. The applicant has not demonstrated any error by the director in conducting his review of the application. Nor has the applicant demonstrated any resultant prejudice such as would constitute a due process violation. *See Vides-Vides v. INS*, 783 F.2d 1463, 1469-70 (9th Cir. 1986); *Nicholas v. INS*, 590 F.2d 802, 809-10 (9th Cir. 1979); *Martin-Mendoza v. INS*, 499 F.2d 918, 922 (9th Cir. 1974), *cert. denied*, 419 U.S. 1113 (1975).

The AAO is never bound by a decision of a service center or district director. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd* 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001). USCIS is not required to approve petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). Neither USCIS nor any other agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery* 825 F.2d 1084, 1090 (6th Cir. 1987), *cert denied*, 485 U.S. 1008 (1988).

Beyond the decision of the director, the record contains evidence that the applicant went to Mexico in October 1986 to the end of December 1986, an absence of more than 45 days.

An applicant shall be regarded as having resided continuously in the United States if at the time the application for temporary resident status is considered filed, as described above pursuant to the CSS/Newman Settlement Agreements, no single absence from the United States has exceeded 45 days, and the aggregate of all absences has not exceeded 180 days during the requisite period unless the applicant can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the applicant was maintaining a residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.2(h).

Continuous unlawful residence is broken if an absence from the United States is more than 45 days on any one trip unless the return could not be accomplished due to emergent reasons. 8

C.F.R. § 245a.2(h)(1)(i). “Emergent reasons” has been defined as “coming unexpectedly into being.” *Matter of C*, 19 I&N Dec. 808 (Comm. 1988).

In a written statement the applicant indicated that she went to Mexico to visit her sick mother. There is no evidence in the record that the applicant’s mother was ill in 1986. Since there is no evidence in the record of proceeding establishing an “emergent reason” as the cause for the applicant’s failure to return to the United States in a timely manner, the applicant has failed to establish by a preponderance of the evidence that she has 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, also ineligible for temporary resident status under section 245A of the Act on this basis.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternative basis for dismissal. 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. The director’s decision terminating the applicant’s temporary status is affirmed.

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