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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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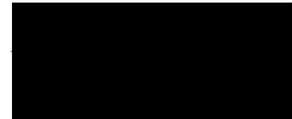


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IN RE: **FEB 27 2012**

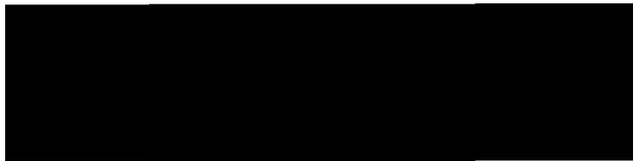
Applicant:



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 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 of the Los Angeles office. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

On January 9, 2006, 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 March 15, 2011, the director denied the I-687 application, finding that the applicant failed to provide sufficient evidence to establish she entered the United States prior to January 1, 1982 and resided continuously thereafter. The director cited inconsistencies between the applicant's testimony and submitted affidavits, as well as inconsistencies in the applicant's testimony regarding her absences from the United States during the requisite period.

On appeal, counsel asserts that the applicant entered the United States before January 1, 1982, and she has continuously resided in an unlawful status since such date through the requisite period. Counsel contends that the director's denial was an abuse of discretion because the decision failed to consider all relevant factors. The director's decision will be withdrawn and the AAO will consider the applicant's claim *de novo*, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(d)(6).<sup>1</sup>

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 245A(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) 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.

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<sup>1</sup> The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

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 to have resided in an unlawful status during the requisite period consists of attestations from five individuals claiming to know the applicant in the United States during the requisite period. Some of the evidence submitted indicates that the applicant resided in the United States after the requisite period; however, because evidence of such residence is not probative of residence during the requisite time period, it shall not be discussed.

The record contains declarations from five individuals claiming to know the applicant during the requisite period. The witness statements are general in nature and state that they have known the applicant in the United States for all of the requisite period. The 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.

In the Amended Notice of Decision, the director noted inconsistencies between the affidavits. In two virtually identical affidavits, the affiants state the applicant entered the United States in 1980. In the other three virtually identical affidavits, the affiants state the applicant entered the United States in 1981. On appeal, counsel contends that regardless of whether the applicant entered the United States in 1980 or 1981, the affiants attest to the applicant entering the United States prior to January 1, 1982. While all of the affiants attest to the applicant entering the United States prior to January 1, 1982, the affiants 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 the affiants have 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 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.

The virtually identical affidavits from [REDACTED] state that they have known the applicant since 1980, they lived close to each other in the City of Pomona, they used to visit her family often, and they describe the applicant as a housewife who raised two daughters. They make two blanket statements attesting to the applicant's continuous residence in the United States and her moral character. The affidavits fail to provide concrete details, such as how or where they met the applicant, the applicant's address(es) of residence or any of the applicant's absences from the United States.

The virtually identical affidavits from [REDACTED] state that they have known the applicant since 1981, they lived close to each other,

they used to visit her family, they describe the applicant as a housewife who raised two daughters and they attest to the applicant's moral character. The affidavits fail to provide concrete details, such as how or where they met the applicant.

Given the general nature of the affidavits and discrepancies, the affidavits provide minimal probative value as evidence in support of the applicant's claim. While they will be given some weight, they fail to demonstrate that they have reliable knowledge about the applicant's residence during the time addressed in the statement.

The director also noted that, at her interview, the applicant stated that her husband entered the United States after their marriage in April 1982. The director found this statement to be inconsistent with the submitted affidavits, which stated the applicant and her husband first entered the United States together in 1980 or 1981. On appeal, counsel asserts that the applicant misspoke and meant to state that her husband re-entered in April 1982. The AAO finds this explanation credible.

The director also noted discrepancies regarding the applicant's dates of absence from the United States during the requisite period. If the applicant's claim is taken at face value, the applicant failed to disclose her date of departure from the United States prior to her re-entry in April 1982. In addition, in her Form I-687, the applicant states a departure to Mexico from March 1987 to April 1987. However, at her interview, the applicant states that she departed the United States in July 1987. On appeal, counsel contends that the applicant cannot remember the exact dates of every departure, but that each departure was brief, casual and innocent. 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). While absences that are brief, casual and innocent are permitted, the discrepancies cast doubt on the credibility of the applicant's testimony regarding the date(s) of departure and the length of her absences.

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. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Here, counsel merely asserted that all of the applicant's departures were brief, but failed to present evidence in support of the claim. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Based upon the foregoing, the AAO finds that 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

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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.