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



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DATE: **JUN 01 2012** Office: LOS ANGELES, CA FILE: [REDACTED]

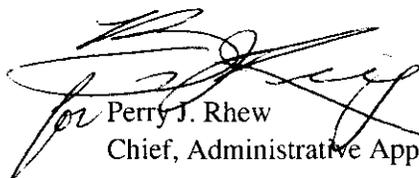
IN RE: Applicant: [REDACTED]

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: SELF-REPRESENTED

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 J. 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 Field Office Director (director), Los Angeles, California. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a native of Mexico who claims to have lived in the United States since 1975, submitted a Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (Act), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet on January 4, 2006. On March 26, 2007, the director denied the application for class membership. The applicant timely filed an appeal to the Special Master. On November 12, 2010, the Special Master granted her appeal and remanded the case to the director in Los Angeles to decide the case on its merit. The record reflects that on February 12, 2012, the director denied the application, finding that the applicant had not established by a preponderance of the evidence that she had continuously resided in the United States in an unlawful status for the duration of the requisite period.

On appeal, the applicant asserts that she has submitted sufficient evidence to establish her continuous residence in the United States for the duration of the requisite period. The AAO has considered the applicant's assertions, 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.¹

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).

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.

¹ 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.

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. Here, the applicant has failed to meet her burden. The documentation that the applicant submits in support of her claim to have arrived in the United States before January 1,

1982 and lived in an unlawful status through the requisite period consists of witness statements, photocopies of W-2 Wage and Tax Statements, photocopies of Earnings Statements, and a copy of an Internal Revenue Service (IRS) printout. The AAO has reviewed each document in its entirety to determine the applicant's eligibility; however, the AAO will not quote each witness statement in this decision. Some of the evidence submitted indicates that 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 provided conflicting statements and documentation in support of her Form I-687 application. At her adjustment of status interview on November 7, 2006, the applicant stated under oath that she came to the United States for the first time in 1968 using a Border Crossing Card, but that she did not remain here permanently until 1981. The record does not contain a copy of the travel document the applicant used to enter the United States in 1968 or 1981. The applicant testified that she traveled outside the United States once during the requisite period – a trip to Mexico in 1987 for 25 days. In response to the question about her employers in the United States since she entered the United States in 1981, the applicant stated that she worked for [REDACTED] in New York in 1981; that she worked for [REDACTED] in New Rochelle, New York, in 1982; she worked part-time as a housekeeper from 1983 to 1987; and part-time for [REDACTED] in California, from 1983 to 1985, picking grapes, lemons, and packing. The applicant also states that she worked for [REDACTED] from 1985 to 1986; and for [REDACTED] from 1987 to 1989, picking and packing grapes.

On the current Form I-687 application she filed on January 4, 2006, the applicant provided the following employment information: [REDACTED] Mamaroneck, New York, Packer, from September 1981 to December 1981; [REDACTED] Bakersfield, California, Farm Labor, from April 1983 to May 1985; [REDACTED] Thermal, California, Farm Labor, from March 1985 to March 1986; and [REDACTED] Mecca, California, Farm Labor, from February 1987 to May 1989. As part of her evidence of residence in the United States during the requisite period, the applicant submitted a statement from [REDACTED] resident of Indio, California, stating that the applicant worked for her as a babysitter from 1981 to 1985, and that she paid the applicant \$40 per week in cash.

On the current Form I-687 application she filed on January 4, 2006, the applicant indicated her residence in the United States during the requisite period as: [REDACTED] New Rochelle, New York, from December 1975 to December 1981; and [REDACTED] Mecca, California, from December 1981 to February 1994. The applicant stated at her interview on November 7, 2007, that she came to the United States to stay in 1981 and that she worked for [REDACTED] in New Rochelle, New York, in 1982. The AAO notes that it is implausible that the applicant would have been working in New Rochelle, New York, in 1982 while residing in Mecca, California. The AAO also notes that the statement by [REDACTED] indicates that the applicant resided with her at [REDACTED] Mecca, California, from 1981 to 1985. A copy of a Form I-693, Medical Examination of Aliens Seeking Adjustment of Status, in the record

indicates the applicant's address as [REDACTED] Mecca, California, as of February 11, 1988.

The inconsistencies regarding the applicant's address and employment in the United States during the requisite period, call into serious question the veracity of her claim that she has continuously resided in the United States for the requisite period.

In support of her claimed employment in the United States during the requisite period, the applicant submitted photocopies of W-2 Wage and Tax Statements, photocopies of Earnings Statements and a copy of an IRS printout. The photocopied employment documentation is suspect. For example, the applicant submitted a copy of a W-2 for 1984 from [REDACTED] however, the applicant indicated on the Form I-687 that she was employed by [REDACTED] from January 1995 to May 1999. The IRS printout indicates that the applicant earned no income in 1984. The record contains a copy of earnings statements from [REDACTED] for 1985 indicating that the applicant was paid through July 1985, but the applicant indicated on the current Form I-687 that her employment with [REDACTED] was from April 1983 to May 1985. There is no evidence of her employment with the company for 1983 and 1984. The applicant submitted a W-2 for 1988 from [REDACTED] however, the applicant did not indicate [REDACTED] as one of her employers in the United States on the Form I-687. The record contains a photocopy of an unsigned statement dated February 14, 1992, written on [REDACTED] letterhead, indicating that the applicant had worked for the company over the past three years on a part time basis. The letter also indicated that the applicant worked for 288 hours in 1989, 961 hours in 1990, and 8 hours in 1991. The statement does not indicate that the applicant worked for the company in 1988.

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 without competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See id.* Therefore, the photocopied W-2 and earnings statements are not credible. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988.

The remaining documentation in support of the application consists of statements from [REDACTED] and [REDACTED] Ms. [REDACTED] claims that the applicant resided with her at [REDACTED] Mecca, California, from 1981 to 1985 and that the applicant worked for her as a babysitter during that period. As discussed above, this statement is inconsistent with the employment and residential information provided by the applicant on the Form I-687 application. Ms. [REDACTED] claims that she has known the applicant in the United States since 1983. Considering the length of time these witnesses claim to have known the applicant, they provided very few details about her life in the United States and the extent of their interaction with her over the years. The statements are not accompanied by documentary evidence – such as

photographs, letters, and the like – demonstrating their personal relationship with the applicant in the United States over the years. Ms. [REDACTED] did not provide any information about the applicant's address during the period they have known and interacted with each other and Ms. [REDACTED] did not provide information about the applicant's address and whereabouts after 1985. The witnesses 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. In view of the substantive deficiencies and the inconsistencies noted above, the AAO finds that the witness statements are not credible. They have little probative value as evidence of the applicant's residence in the United States during the requisite period.

The inconsistencies discussed above are material to the applicant's claim in that they have a direct bearing on the applicant's residence and employment in the United States during the requisite period. No evidence of record resolves these inconsistencies. As previously indicated, 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).

Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that she is eligible for the benefit sought. The various statements currently in the record which attempt to substantiate the applicant's residence in the United States during the statutory period are not objective, independent evidence such that they might overcome the inconsistencies in the record regarding the applicant's claim that she maintained continuous residence in the United States throughout the requisite period, and thus are not probative.

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.