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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: **JUN 07 2012**

OFFICE: HOUSTON, TX

[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. The file has been returned to the National Benefits Center. If your appeal was sustained, or if the matter 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.

Thank you.

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The applicant's temporary resident status under Section 245A of the Immigration and Nationality Act (Act) was terminated by the Field Office Director, Houston, Texas. The decision to terminate is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record indicates that the applicant is a native of Mexico who claims to have resided in the United States since 1980. She filed an application for temporary resident status under section 245A of the Act (Form I-687), together with a Form I-687 Supplement, CSS/Newman (LULAC) Class Membership Worksheet, on December 28, 2005.

On March 1, 2012, the director terminated the applicant's temporary resident status after determining that the applicant had failed to establish her eligibility. The director noted that the applicant responded to a notice of intent to terminate (NOIT), but failed to overcome the reasons for termination of her status. In the NOIT the director also noted that the applicant submitted questionable documentation, including affidavits, in an attempt to establish her continuous unlawful residence and continuous physical presence in the United States during the requisite period. The director also noted that the applicant had a prolonged absence of over 45 days.

On appeal, the applicant asserts that she has provided sufficient evidence to establish her eligibility for temporary resident status. The applicant submits a statement and some of the same evidence provided earlier.

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.<sup>1</sup>

An applicant for temporary resident status – under section 245A of the Immigration and Nationality Act (the Act) – 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. *See* 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. *See* 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. *See* 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. *See* 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 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).

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 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 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.

Although the regulations provide an illustrative list of contemporaneous documents that an applicant may submit, the list also permits the submission of affidavits and any other relevant document. *See* 8 C.F.R. § 245a.2(d)(3)(vi)(L).

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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that she continuously resided in the United States in an unlawful status from before January 1, 1982 through the date she attempted to file a Form I-687 during the original one-year

application period that ended on May 4, 1988. After reviewing the entire record, the AAO determines that she has not.

The record includes various items of evidence, including several affidavits, submitted in support of the applicant's claim of continuous residence during the requisite period. The applicant asserts that the affidavits and declarations provided establish her unlawful residence since prior to January 1, 1982.

The record includes the following evidence submitted by the applicant which pertains to the requisite period:

Affidavits & Letters:-

- 1) A December 19, 2005 affidavit from [REDACTED] attesting that he first met the applicant in 1981 through the applicant's sister. [REDACTED] also attests that she and the applicant attended family reunions; that the applicant travelled to Mexico in December 1983, and in December 1986, to visit family; and he attests to the applicant's work habits and her character.
- 2) A November 22, 2006 affidavit from [REDACTED], attesting to having known the applicant since 1981. [REDACTED] also attests that the applicant has resided for several years at the apartment complex he now manages; and, to their friendship and to the applicant's character.
- 3) A December 19, 2005 affidavit from [REDACTED], attesting to having known the applicant in her occupation as a hair stylist in 1981. [REDACTED] also attests that the applicant cuts her hair, and to their friendship and to the applicant's character.
- 4) A declaration from [REDACTED], stating that she met the applicant in 1987, and that the applicant helped her sell cosmetics until 1988. [REDACTED] also attests to the applicant's disposition and work habits.
- 5) A December 18, 2005 declaration from [REDACTED], attesting that she first met the applicant at church in 1983. [REDACTED] also attests to her friendship with the applicant; attests that she and the applicant socialize together, attend reunions; and, that they visit and pray with community members.
- 6) A December 18, 2005 declaration from [REDACTED] declaring that he first met the applicant at a hospital with a friend. [REDACTED] also states that they became friends and that they try to keep in touch with each other.
- 7) A December 18, 2005 declaration from [REDACTED] attesting that she first met the applicant at church in 1988. [REDACTED] also attests that she and the applicant keep in touch and are members of the same church.

- 8) A December 17, 2005 declaration from [REDACTED], attesting that he first met the applicant at the Fairmount Apartments in 1982. [REDACTED] also attests that he and the applicant have maintained their friendship; that the applicant and his wife are also friends; and attests to the applicant's sociability and character.

The remaining documentation, including income tax returns are dated after 1988 and do not establish the applicant's continuous residence.

The affidavits and declarations provided do not establish the applicant's continuous residence as they lack detail. The affiants and declarants state generally that they have known the applicant during the requisite period, but, they do not provide any significant detail. For example, they do not date their acquaintance with the applicant; how frequently they had contact with the applicant; and, do not describe with particularity any circumstances when they interacted with the applicant; and most of the applicants do not indicate where they met the applicant. It is also noted that the record lacks evidence of the affiants' and declarants' residence in the United States, or evidence to establish the basis for their attestations regarding the applicant's residence during the requisite period.

We note the applicant's assertion that due to the passage of time since her arrival in the United States she is unable to obtain additional documentation to establish her continuous residence since 1981 and that she relies on the documentation submitted. As discussed above, however, the documentation of record is insufficient to establish the applicant's continuous residence throughout the requisite period. Also, it is reasonable to expect that the applicant would be able to provide additional documentation to establish her residence in view of her claim that she has resided here since prior to January 1, 1982.

In addition, the record reflects that the applicant has had a prolonged absence of over 45 days which disrupts any continuous residence she can establish. The applicant's Form I-687 application indicates that the applicant departed the United States in September 1986 to visit family in Mexico, and that she returned to the United States in December 1986. The applicant does not dispute that she had an absence which exceeded 45 days. It is noted that in the NOIT, the director raised the issue of the applicant's prolonged absence. However, the applicant did not address the matter in her response to the NOIT, nor has she done so on appeal. In addition, the record lacks documentation to establish that the applicant's prolonged absence was due to an emergent reason.

Continuous unlawful residence is broken if an absence from the United States is more than 45 days on any one trip unless 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). There is no evidence of record to indicate that the prolonged absence was necessitated by an emergent reason.

The applicant's prolonged absence from the United States for a period exceeding 45 days, is clearly a break in any period of continuous residence she may have established. As the applicant has not provided any evidence there was an "emergent reason" for her failure to return to the United States

in a timely manner, she has failed to establish by a preponderance of the evidence that she 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*.

As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the applicant's reliance upon documents with minimal probative value, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982, through May 4, 1988.

Based on the foregoing analysis of the evidence, the AAO concludes that the applicant has failed to establish her continuous unlawful residence in the United States throughout the requisite period. Thus, the record does not establish that the applicant entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from that date through the date she attempted to file a Form I-687 during the original one-year application period that ended on May 4, 1988. Accordingly, the applicant is ineligible for temporary resident status under section 245A(a)(2) the Act.

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