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U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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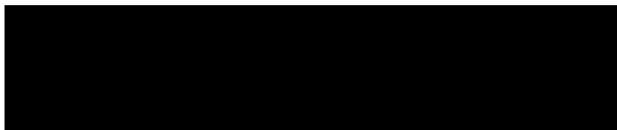
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IN RE: Applicant:

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 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.

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, or *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, National Benefits Center, and 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 Senegal who claims to have resided in the United States since March 1981. 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 March 31, 2005.

On February 28, 2007, the director denied the application noting that the applicant failed to respond to a November 30, 2006 Notice of Intent to Deny (NOID) requesting that the applicant provide evidence demonstrating her continuous unlawful residence, and continuous physical presence, in the United States during the requisite period. Thus, the director indicated that the application was abandoned.

USCIS subsequently informed the applicant that, pursuant to a recent court order, applications for temporary resident status may not be denied based on abandonment. The applicant was informed that she was entitled to file an appeal with AAO which must be adjudicated on the merits.

In the Amended Notice of Decision, dated April 13, 2011, the director determined that the applicant had failed to submit sufficient evidence to establish the requisite continuous residence and denied the application. The director noted that the applicant had failed to submit additional evidence in response to the NOID.

On appeal, counsel for the applicant asserts that the director improperly denied the application and that the applicant has submitted sufficient evidence to establish her eligibility for Temporary Resident Status under section 245A of the Act. Counsel submits a brief and additional evidence.

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 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 – 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.

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 contains the following evidence submitted by the applicant:

Affidavits:-

- 1) Two affidavits from [REDACTED] dated March 24, 2005, and May 9, 2011, respectively. In her March 24, 2005 affidavit [REDACTED] attests that she first met the applicant in 1981 through an associate, developed her own relationship with the applicant that has continued; and, she that from March 1981 to April 1995 the applicant resided at [REDACTED]

In her May 9, 2011 affidavit, [REDACTED] attests that she first met the applicant in 1981 through the applicant's aunt at the [REDACTED] located at [REDACTED] and that she and the applicant resided at the [REDACTED] until 1986 when she moved to Decatur, Georgia; that since meeting the applicant they have kept in contact with each other; and, that after meeting the applicant she once visited Senegal and was happy about the visit.

- 2) An affidavit from [REDACTED] dated May 9, 2011. [REDACTED] attests that she first met the applicant in 1983 through her friend, [REDACTED] [REDACTED] where they both resided; that when they met the applicant informed her that she had been residing in the United States for 2 years, since around December 1981, and that the applicant was eager to share information concerning her West African culture; that the applicant once visited Senegal and was "thrilled about the visit;" and, that she knows the applicant's three children.

These affidavits, however, are questionable. In her March 24, 2005 affidavit, [REDACTED] attests that she first met the applicant through an associate, and indicates that the applicant resided at [REDACTED] from March 1981 to April 1995. However, in her May 9, 2011

affidavit, [REDACTED] attests that she first met the applicant through the applicant's aunt at a different address, at the [REDACTED] and that she and the applicant resided at the [REDACTED] complex until 1986 when she moved to [REDACTED]. [REDACTED] attests that she first met the applicant in 1983 through [REDACTED] where they both resided. While [REDACTED] attests that the applicant resided in Atlanta from March 1981 to April 1995, [REDACTED] attests that the applicant informed her that she had been in the United States for 2 years, since around December 1981. It is noted that on her Form I-687, the applicant does not indicate ever having resided at [REDACTED]. It also noted that the affiants do not provide details, such as to indicate how they date their acquaintance with the applicant, how they maintained contact with the applicant, how the applicant was cared for and whether she attended school during their acquaintance, as she was only 8 years old when they first became acquainted with her.

In addition, it is noted that the applicant indicates on her Form I-687 that from 1981 to 1996 she had been self-employed as a Braider. In 1981, however, the applicant was only 8 years old, and the record lacks supporting documentation, such as school records, to support the applicant's claim and the applicant does not provide an explanation why she had been self-employed since she was 8 years old instead of attending school.

This complete lack of reliable evidence casts doubt on whether the applicant resided in the United States from 1981 as she claims. 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 lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the discrepancies in the record. Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it must be concluded that the applicant has failed to establish that she continuously resided in the United States in an unlawful status during the requisite period.

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.