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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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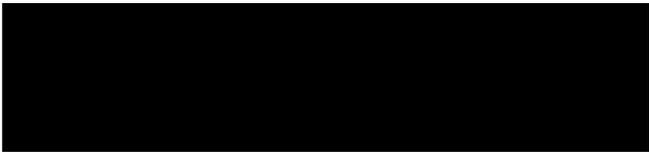


IN RE: Applicant:



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.

Thank you,

A handwritten signature in black ink, appearing to read "Perry Rhew".

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 Field Office Director, Los Angeles, California, 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 [REDACTED] who claims to have resided in the United States since 1979. 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 January 9, 2006.

On August 5, 2011, the director denied the application after finding that the applicant had failed to provide evidence demonstrating her eligibility for Temporary Resident Status. The director noted that the applicant submitted a letter and an affidavit from two witnesses; however, the evidence provided lacked detail and was insufficient to establish her continuous residence and continuous physical presence. The director determined, therefore, that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, counsel asserts that the director failed to give proper weight to the evidence submitted and that the applicant has provided sufficient evidence to establish her eligibility for Temporary Resident Status. The applicant submits a statement and some of the same evidence previously provided.

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.¹

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

¹The 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).

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 & Letters:-

- 1) A December 27, 2005 letter, from [REDACTED], stating only that he has known the applicant since 1979.
- 2) A December 29, 2005 affidavit from [REDACTED], attesting to having known the applicant since childhood, and that when the applicant came to the United States in 1979 she resided at [REDACTED]. [REDACTED] also attests to her family relationship and friendship with the applicant, and to the applicant's character.
- 3) Two affidavits, dated September 27, 2011, from [REDACTED] attesting that the applicant lived with their family and helped their parents with childcare.
- 4) A September 27, 2011 affidavit [REDACTED] attesting to having known the applicant, [REDACTED] that the applicant came to live with her family when she first came to United States and helped her family with childcare without compensation; and since her arrival the applicant has lived with her family caring for their children and now she cares for her ailing husband.
- 5) A declaration from the applicant stating that since her arrival in the United States in 1979, she has resided with the her [REDACTED] and his family; that she provides childcare for his children, including [REDACTED] free of charge.

These affidavits, however, lack detail and do not establish the applicant's continuous residence. Besides stating that he has known the applicant since 1979, [REDACTED] does not give any additional information. [REDACTED] does not indicate how she dates the applicant's residence in the United States, how and to what extent she maintained contact with the applicant since the applicant came to the United States, and does not indicate her own residence or any other address for the applicant during the requisite period. [REDACTED] make generalized statements about their relationship and some of their experiences with the applicant. However, neither of them provides specific details of their activities with the applicant and do not date any of their activities. [REDACTED] fails to give details of her relationship with the applicant. For example, [REDACTED] attests that since her arrival in the United States the applicant has cared for her family

without compensation, but does not indicate the basis for the applicant providing them free services for over 30 years, and does indicate their living arrangements with the applicant. As such, these affidavits are not probative of the applicant's continuous residence and are of little evidentiary value.

It is also noted that the applicant has submitted questionable documentation. Specifically, [REDACTED] attests to having known the applicant to have resided in the United States in 1979, and knowing that since her arrival the applicant has resided at [REDACTED]. However, this contradicts the applicant's declaration wherein she states that when she came to the United States in 1979 she resided with her [REDACTED] and his wife and daughter at his home located on [REDACTED]; that in 1981 she moved with the family to [REDACTED] and, in 1989 they moved to [REDACTED]. The applicant does not explain this inconsistency in the record.

This complete lack of reliable evidence casts doubt on whether the applicant resided in the United States since 1979, 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 her testimony and 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.