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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]

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DATE: SEP 14 2012 OFFICE: LOS ANGELES 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 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, Los Angeles. The Administrative Appeals Office (AAO) now reopens the case, *sua sponte,* and will dismiss the matter.

On April 3, 2005, 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 July 20, 2009, the applicant filed an application to adjust status from temporary to permanent resident (Form I-698). The director of the Los Angeles office erroneously denied the I-687 application, finding that the applicant failed to timely file the Form I-698 application. The director then terminated the applicant's temporary resident status because the application for permanent residence had been denied. The applicant appealed the director's decision to the AAO and the appeal was sustained. The AAO now reopens the case, *sua sponte,* to 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).[1]

On August 13, 2012, the AAO issued the applicant a Notice of Intent to Deny (NOID) and provided the applicant 21 days in which to respond or to provide additional evidence in support of his claim. As of the date of this decision, no response was received; therefore, the record will be considered complete.

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 245(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)(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. 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

[1] 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).

documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.2(d)(5). To meet his or her burden of proof, 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. 8 C.F.R. § 245a.2(d)(6).

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. 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 petitioner 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, 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.

The issue in this proceeding is whether the applicant established she: (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. The evidence submitted in support of the applicant's claim consists of copies of school records and school identification cards, a church letter and affidavits from seven individuals claiming to know the applicant during the requisite period. The AAO has reviewed each document to determine the applicant's eligibility.

In the applicant's interview, dated August 15, 2005, she claimed to have first entered the United States in 1981 with one departure from the United States in 1987 to El Salvador to visit family. She claimed to have attended high school in the United States from 1981 to 1984.

The copy of the applicant's high school transcripts indicates her presence in the United States from September 1981 through June 1984.[2] The record also contains copies of the applicant's school identification cards from 1981 through 1984. These documents establish the applicant's residence in the United States from 1981 through 1984.

The affidavits from [redacted] (the applicant's sister), [redacted] (the applicant's cousin), [redacted] (the applicant's nephew) and [redacted] (the applicant's nephew) are general in nature and state that the applicant resided in the United States for all, or a portion, of the requisite period. The affidavits fail to provide concrete details which would corroborate the extent of the applicant's relationship with the affiants and demonstrate that the affiants have a reliable knowledge about the applicant's residence during the time addressed in the statements. 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 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. For example, the last five affidavits state when they met the applicant but fail to provide any other concrete details. [redacted] states that he has known the applicant for many years, but fails to provide any dates. In addition, the affidavit from [redacted] and one of the affidavits from [redacted] are both notarized by another affiant, [redacted] which cast doubt on the credibility of the affiants' statements. Given the above, the affidavits provide minimal probative value and will be given little weight as evidence in support of the applicant's claim.

The record contains a declaration from [redacted] stating that he has known the applicant since 1984. The declaration does not conform to regulatory standards for letters from organizations as stated in the regulation at 8 C.F.R. § 245a.2(d)(3)(v). The declaration fails to state the address where the applicant resided and establish the origin of the information being attested to. In addition, in the instant Form I-687, at Question #31, where the applicant was asked to list all affiliations or associations, clubs, organizations, churches, unions, businesses, etc., she failed to state that she was ever associated with this church. She also failed to list her association with this church in the initial I-687 application, filed in 1990 to establish her CSS class membership. These discrepancies detract from the credibility of the declarant's statement. Given the above, the declaration will be given little weight as evidence in support of the applicant's claim.

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[2] The record contains the applicant's birth certificate, which indicates that she was born in El Salvador on April 14, 1962, although the school records list an incorrect date of birth for the applicant of April 14, 1965. Based on her birth certificate, she began high school at the age of 19 and graduated at the age of 22.

In addition, the record contains a copy of the applicant's 1987 student photo identification card, valid through 1989, at Universidad Technologica in El Salvador. At the time of her interview on January 5, 2011, the applicant denied going to college in El Salvador after graduating from high school in the United States in 1984. This discrepancy detracts from the credibility of the applicant's claim.

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). In the AAO's NOID, the applicant was given an opportunity to explain and reconcile the above inconsistencies, but failed to do so. The record reflects that no response was received. Thus, the AAO finds the applicant's claim to lack credibility.

Based upon the foregoing, the applicant has established her residence in the United States from 1981 through 1984; however, the evidence is insufficient to establish her residence for the remainder of the requisite period. Therefore, 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 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.

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