



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF I-D-P-

DATE: DEC. 17, 2015

APPEAL OF HOUSTON DISTRICT OFFICE DECISION

APPLICATION: FORM I-687, APPLICATION FOR STATUS AS A TEMPORARY RESIDENT UNDER SECTION 245A OF THE IMMIGRATION AND NATIONALITY ACT

The Applicant, a native and citizen of Honduras, seeks status as a temporary resident. *See* Immigration and Nationality Act (the Act) § 245A, 8 U.S.C. § 1255(a). The Director, Houston District Office, terminated the Applicant's temporary resident status. The matter is now before us on appeal. The appeal will be dismissed.

The Applicant filed an application for temporary resident status under section 245A of the Act (Form I-687), which was approved, and the Applicant was granted temporary resident status on December 4, 2006.

On November 26, 2013, the Director issued a Notice of Intent to Terminate after determining that the Applicant had not established her eligibility for temporary resident status. The Director noted that the affidavits attesting to the Applicant's residence in the United States during the requisite period were of little evidentiary value, as they lacked sufficient detail. The Director also noted discrepancies between the documentation the Applicant provided and her asylum application, particularly concerning her claimed date of entry and her continuous residence during the requisite period. In addition, the Director found that the Applicant could not establish the requisite continuous residence, as her prolonged absence exceeded 45 days. The Director requested that the Applicant provide evidence demonstrating her continuous unlawful residence and continuous physical presence in the United States during the requisite period. The Director granted the Applicant 30 days to submit additional evidence.

In response, the Applicant stated that she did not break her period of continuous presence; she submitted her grandmother's death certificate as evidence of "an emergent reason under 8 C.F.R. § 245a(2)(h)(1)(i)" for her extended stay in Honduras; she never submitted an asylum application and was unaware of the application until 2004, when she was informed of it; and the Director has not "obtained any adverse information from the affiants."

On February 26, 2014, the Director terminated the Applicant's temporary resident status, finding that the Applicant did not overcome the reasons stated for termination in the notice.

Matter of I-D-P-

On appeal, the Applicant asserts that she has provided sufficient evidence to establish her eligibility for temporary resident status.

We have reviewed all of the evidence and reach our decision based on our assessment of the credibility, relevance, and probative value of the evidence.¹

An applicant for temporary resident status under section 245A of 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 on such date and through the date the application is filed. Section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2). An 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 an 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 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 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, a 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.

¹We conduct appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

(b)(6)

Matter of I-D-P-

Even if a director has some doubt as to the truth, if an 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.

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 first 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.

In support of her claimed residence in the United States, the Applicant submitted:

- 1) A notarized letter of employment dated July 31, 1991, stating that the Applicant had been paid \$100 weekly to care for the employer’s two children and her grandmother, from October 1981 to April 1989, and she lived at her home five days a week. The employer did not provide information about the Applicant’s address for the remaining two days of the week at the time of employment; does not show periods of layoff; or declare whether the information comes from her records, and if so, identify the location of such records, state whether such records are accessible or, in the alternative, explain why such records are unavailable, as required under 8 C.F.R. § 245a.2(d)(3)(i). Given these deficiencies this letter is of minimal probative value to support the Applicant’s claims that she continuously resided in the United States from January 1, 1982, through May 4, 1988.
- 2) Affidavits from [REDACTED] dated July 29 and July 30, 1991. The affiants attest to having known the Applicant since October 1981, November 1981, and December 1981, respectively. The affiants also attest to the Applicant’s good character. However, the affiants do not indicate how they date their acquaintance with the Applicant, where and under what circumstances they first met the Applicant, and whether and how they maintained contact with her since their initial acquaintance.
- 3) An affidavit from [REDACTED] dated July 27, 1991. [REDACTED] attests that she and the Applicant were roommates at [REDACTED] Texas, from

(b)(6)

Matter of I-D-P-

October 1981 until January 1986. The affiant does not indicate how she dates her acquaintance with the Applicant, does not give details of their acquaintance that might explain how they became roommates when the affiant was [redacted] years old, and does not describe the arrangements they had as roommates.

- 4) An affidavit from [redacted] dated July 2, 1991. [redacted] attests that he and the Applicant were roommates at [redacted] Texas, since January 1986. The affiant does not indicate how he dates his acquaintance with the Applicant, does not give details of their acquaintance, to indicate how they became roommates, and what arrangements they had as roommates.
- 5) Copies of ten envelopes from Honduras addressed to the Applicant in the United States. One bears a 1981 postmark stamp, and the others are postmarked from 1984 through 1988. There are no envelopes for 1982 and 1983, and the authenticity of the envelopes cannot be determined from the photocopies. The envelopes provided are, therefore, of minimal probative value of the Applicant's residence for the postmarked years.

The Applicant has not submitted sufficient evidence to establish her continuous residence 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 minimal probative value of the Applicant's documents, we conclude that she has not established continuous residence in an unlawful status in the United States from prior to January 1, 1982, through May 4, 1988.

In addition, on a Form I-589, Application for Asylum and Withholding of Removal, and an accompanying Form G-325A, Biographic Information, the Applicant indicated that she resided in Honduras until 1989. During an interview the Applicant stated that she had two children, one born in [redacted] 1979 in Honduras and the other in [redacted] in the United States. However, on the asylum application the Applicant indicated that two of her children were born in Honduras, in 1979 and in [redacted] 1987. The record also includes the Applicant's passport, issued in Honduras in January 1989. The passport contains the Applicant's signature, photographs, and fingerprint. The passport also includes a visa, issued in January 1989, allowing her to travel to Mexico.

The Applicant asserts she did not file an asylum application in the United States. She states that she became aware of its existence from U.S. Citizenship and Immigration Services in 2004. Moreover, the Applicant states that she was not in Honduras when the passport was issued, but that her brother obtained her Honduran passport for her. She also states that she did not disclose that she had a child born in Honduras in [redacted] 1987 because she was told that if she reported the birth on her Form I-687 application, she would not qualify for adjustment to lawful permanent resident status. On appeal, the Applicant states that she indicated on her Form I-687 that she had departed the United States in [redacted] 1987, during which time her child was born in Honduras.

Matter of I-D-P-

As noted above, the passport contains the Applicant's signature, photographs, and fingerprint. The passport also includes a visa, issued in Honduras January 1989, allowing the Applicant to travel to Mexico. The asylum application and documentation, including the supporting Form G-325A, have been considered because they are part of the Applicant's record. The Applicant provides no evidence to support her claims that she did not submit it or know about it.

The information from the affidavits and envelopes the Applicant provided, moreover, are contradicted by the Form I-589, filed on January 28, 1989, and other documentation in the record. The Form I-589 and Form G-325A indicate that the Applicant resided in Honduras until January 1989. In addition, the record includes a photocopy of her Honduran passport, issued in January 1989 in Honduras, with a visa allowing her to travel to Mexico. The passport and visa issuance in 1989 correspond to the Applicant's residence in Honduras as indicated on the Form I-589 and accompanying Form G-325A. In addition, the affidavits in the record do not include sufficient detailed information about the claimed relationships to the Applicant and her continuous residency in the United States throughout the requisite period. For instance, the affiants do not supply details about the Applicant's life that might reflect knowledge about her family members, education, hobbies, employment or other particulars about her life in the United States. The affiants do not indicate other details that would lend credence to the claimed acquaintance with the Applicant and her residence in the United States during the requisite period.

The affidavits lack concrete information, specific to the Applicant, which reflects and corroborates the extent of this association and demonstrates that the affiants had a sufficient basis for reliable knowledge about the Applicant during the time addressed in their affidavits. To be considered probative and credible, witness affidavits must do more than state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time 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. Therefore, the affidavits have little probative value.

The lack of probative evidence and discrepancies cast doubt on whether the evidence provided establishes the Applicant's continuous unlawful residence and physical presence. In addition, the evidence does not establish whether the content of the Applicant's Form I-687 application is accurate. The lack of reliable evidence casts doubt on whether the Applicant has resided in the United States since 1981, as she claims.

Doubt cast on any aspect of an 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 an 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 not provided objective evidence to explain or justify the discrepancies in her application and in the record. Therefore, the reliability of the remaining evidence offered by the Applicant has not been established, and it must be concluded that she has not shown that she continuously resided in the United States in an unlawful status throughout the requisite period.

(b)(6)

Matter of I-D-P-

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. Because the Applicant provided documents with minimal probative value, we conclude that she has not established continuous residence in an unlawful status in the United States from prior to January 1, 1982, through May 4, 1988.

Moreover, we find that the record reflects the Applicant disrupted her period of continuous unlawful residence² and physical presence in the United States during the statutory period of November 6, 1986, to May 4, 1988.

The Applicant claimed on her initial and current Form I-687 applications that on February 8, 1988, she departed the United States for Honduras to visit her grandmother who was ill and who passed away on [REDACTED] 1988. The Applicant testified that she re-entered the United States on April 28, 1988, resulting in an absence exceeding 45 days.

An applicant shall be regarded as having resided continuously in the United States if, at the time of filing the application for temporary resident status, no single absence from the United States has exceeded 45 days, and the aggregate of all absences has not exceeded 180 days between January 1, 1982, through the date the application is filed, unless the applicant can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the alien was maintaining residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.1(c)(1)(i). “Emergent reasons” is defined as “coming unexpectedly into being.” *Matter of C*, 19 I&N Dec. 808 (Comm. 1988).

We find that the Applicant disrupted her continuous unlawful residence in the United States during the statutory period of January 1, 1982, to May 4, 1988, and she has not shown emergent reasons for the length of the absence. Specifically, the Applicant has not explained why her absence extended to April 28, 1988, given that her grandmother died on [REDACTED] 1988. The Applicant has not shown that she resided continuously in the United States with no single absence exceeding 45 days.

A legalization applicant must show continuous physical presence in the United States from November 6, 1986, through May 4, 1988. Section 245A(a)(3)(A) of the Act, 8 U.S.C. § 1255a(a)(3)(A). An absence during this period which is found to be brief, casual, and innocent shall not break a legalization applicant’s continuous physical presence. Section 245A(a)(3)(B) of the Act, 8 U.S.C. § 1255a(a)(3)(B). *See, e.g., Espinoza-Gutierrez v. Smith*, 94 F.3d 1270 (9th Cir. 1996) (holding that a legalization applicant’s absence would not break continuous physical presence if it

² The regulation implementing the statutory requirement of “continuous unlawful residence” in the United States defines that phrase as no single absence from the United States exceeding 45 days and absences in the aggregate not exceeding 180 days. See section 245A(a)(2)(A) of the Act, 8 U.S.C. § 1255(a)(2)(A), and 8 C.F.R. § 245a.1(c)(1)(i). The term “continuous physical presence” suggests that a shorter time frame should be applied to determine the permissible length of single and aggregate absences from the United States during the period from November 6, 1986, to May 4, 1988.

Matter of I-D-P-

was brief, casual, and innocent, as defined by the court in *Rosenberg v. Fleuti*, 374 U.S. 449 (1963)). See also *Assa'ad v. U.S. Attorney General* 332 F.3d 1321 (11th Cir. 2003).

The Applicant's absence from the United States in this case was not brief, casual and innocent in that the record indicates that she was absent from the United States for over 45 days. Therefore, based upon the foregoing, the Applicant has not established 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*. Further, the Applicant disrupted her period of required continuous residence and physical presence in the United States during the statutory period of November 6, 1986, to May 4, 1988. The Applicant is therefore ineligible for temporary resident status under section 245A of the Act.

An applicant applying for adjustment of status has the burden of proving by a preponderance of evidence that he or she is eligible for adjustment of status under section 245a of the Act. 8 C.F.R. § 245a.2(d)(5). The Applicant has not met her burden.

ORDER: The appeal is dismissed.

Cite as *Matter of I-D-P-*, ID# 13015 (AAO Dec. 17, 2015)