

(b)(6)

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

Date: **MAY 16 2014** Office: NATIONAL BENEFITS CENTER 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:

[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
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 of the National Benefits Center. The decision is now before the Administrative Appeals Office (AAO) on appeal.¹ The appeal will be dismissed.

On October 9, 2013, the director terminated the applicant's temporary resident status, pursuant to the terms of the CSS/Newman Settlement Agreements, finding the applicant to be ineligible based on both a lack of documentation and inconsistencies in the record of proceedings. On November 12, 2013, the applicant appealed the director's decision to the AAO.

On appeal, counsel contends that the director's termination is "arbitrary and meritless because the sole basis of denial was that they are very general in nature." Counsel asserts that the director erred in applying a quantitative analysis rather than a qualitative analysis as required by law. Counsel also contends that the director failed to take into account the passage of time and attendant difficulties in obtaining corroborative documentation of unlawful residence. On appeal, counsel provides copies of previously submitted evidence. We have considered counsel's assertions, reviewed all of the evidence, and have made a *de novo* decision based on the record and our assessment of the credibility, relevance and probative value of the evidence.²

The temporary resident status of an alien may be terminated upon the determination that the alien was ineligible for temporary residence. Section 245A(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1255a(b)(2)(A), and 8 C.F.R. § 245a.2(u)(i).

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 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. 8 C.F.R. § 245a.2(b)(1).

¹ On the Form I-694 submitted on November 12, 2013, counsel checked the box indicating that the appeal was for a Permanent Residence (I-698) application. However, because counsel indicated that he was appealing the director's decision dated October 9, 2013, which is the director's Notice of Termination of the applicant's temporary resident status (Form I-687), the appeal will be accepted as an appeal for the applicant's Temporary Residence (I-687) application.

² 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 periods, 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's 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).

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.* 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. *See* 8 C.F.R. § 245a.2(d)(6). 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 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 or petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (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. 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. *Matter of Ho*, 19 I & N Dec. 582, 591-592 (BIA).

The issue in this proceeding is whether the applicant has overcome the inconsistencies in the record and established her eligibility for temporary resident status. As previously stated, the applicant must establish that she (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status throughout the requisite period. The documentation that the applicant submits in support of her claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of witness statements, copies of postmarked envelopes and other documents. The documents have been reviewed in their entirety to determine the applicant's eligibility; however, each witness statement will not be quoted in this decision. Some of the evidence submitted indicates that the applicant resided in the United States after May 4, 1988; however, because evidence of residence after May 4, 1988 is not probative of residence during the requisite time period, it shall not be discussed.

The applicant's Form I-687 reflects that she claims to have entered the United States in May 1981 with her parents when she was three years old. The record contains a statement from the applicant, stating that her father arranged travel to the United States in 1981, in 1987 and in 1997. She asserts that she has limited information about the arrangements for entry into the United States. In 1989, when the applicant and her family moved back to India, she states that a lot of documents were destroyed except for copies of the submitted envelopes. The applicant's father has been deceased since 2006.

The record contains witness statements from the applicant's mother, [REDACTED] (applicant's uncle), and [REDACTED] (applicant's uncle). The statements are general in nature, and state that the witnesses have knowledge of the applicant's residence in the United States for all of the requisite statutory period.

The applicant's mother states that the family resided at [REDACTED] Florida from 1981 through 1989. The applicant's uncles state that the applicant resided with her father in the United States from 1981 to 1989, and they sent them letters at [REDACTED] FL [REDACTED]. Although the witnesses claim to have personal knowledge of the applicant's residence in the United States during the requisite period, the witness statements do not provide concrete information, specific to the applicant and generated by the asserted associations with her, or even the applicant's father, which would reflect and corroborate the extent of those associations, and demonstrate that they have a sufficient basis for reliable knowledge about the applicant's residence in the United States during the requisite period.

To be considered probative and credible, witness statements must do more than simply state that a witness 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 it probably did exist and that the witness, by virtue of that relationship, does have knowledge of the facts alleged. They fail to mention any specific circumstances regarding the applicant's life (ex. if she attended school, activities, etc.) that would indicate direct knowledge of her presence in the United States during the requisite period. Also, the witnesses do not state how frequently they had contact with the applicant or her family during the requisite period. The witnesses do not

provide sufficient details that would lend credence to their claimed knowledge of the applicant's residence in the United States during the requisite period.

In addition, the witness statements are inconsistent regarding the applicant's address of residence during the requisite period. While the applicant's mother states the family resided at [REDACTED] the applicant's uncles state that they sent the applicant's family letters at [REDACTED] Florida. They do not mention any other residence. The applicant's mother did not mention a different mailing address from their claimed residence. The record contains a statement from the applicant, claiming that all mail was sent to the [REDACTED] address because that address was used on Mr. [REDACTED]'s driver's license and was the mailing address for everybody. The applicant did not submit any independent evidence to support her claim. The inconsistencies regarding the applicant's address of residence during the requisite period are material to her claim in that they have a direct bearing on the applicant's presence in the United States during the requisite period.

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent, objective evidence pointing to where the truth lies. 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. *Matter of Ho*, 19 I & N Dec. 582, 591-592 (BIA). These contradictions undermine the credibility of the applicant's claim of entry into the United States prior to January 1, 1982 and continuous residence in the United States during the requisite period. For these reasons, the witness statements do not indicate that their assertions are probably true.

The record also contains an employment affidavit from [REDACTED] stating that the applicant's father worked for him from May 1981 to October 1988 as a fruit picker and he paid the affiant cash on a weekly basis. In another statement, the affiant stated that the applicant's father and his family were tenants at [REDACTED] during the employment period and the applicant's father paid cash. The record contains a copy of the affiant's driver's license reflecting his street address at [REDACTED]

The employment affidavit does not meet the requirements set forth in the regulations, which provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment. The regulation at 8 C.F.R. § 245a.2(d)(3)(i) provides that letters from employers must include: (A) Alien's address at the time of employment; (B) Exact period of employment; (C) Periods of layoff; (D) Duties with the company; (E) Whether or not the information was taken from official company records; and (F) Where records are located and whether the Service may have access to the records. If the records are unavailable, an affidavit-form letter stating that the alien's employment records are unavailable and why such records are unavailable may be accepted in lieu of subsections (E) and (F). The employment verification letters fail to comply with the above cited regulation because they lack considerable detail regarding the applicant's employment. For instance, the witness does not state the specific location at which the applicant was employed or how he was able to date the applicant's employment. Furthermore, while the affiant states that no other records are available, he fails to state the reason why the records are unavailable. It is also noted that the affiant does not mention that the applicant's family

used his address of residence, as indicated on his driver's license, as a mailing address instead of their claimed address of residence at [REDACTED]. For all of the above reasons, the employment affidavit has minimal probative value as evidence of the applicant's claimed residence in the United States during the requisite period.

The record also contains copies of four postmarked envelopes addressed to the [REDACTED] Family at [REDACTED] dated in February 1981, August 1982, August 1985 and May 1988. While this evidence may indicate the applicant's presence in the United States during specific periods of time in the United States, given the unreconciled inconsistencies in the record regarding the applicant's address of residence, it is insufficient to establish the applicant's continuous residence throughout the entire requisite period. Moreover, the applicant is not specifically listed on the envelopes and no correspondence was submitted with the envelopes to indicate such. For these reasons, the documents do not establish the applicant's continuous residence for the duration of the requisite period.

On appeal, counsel asserts that the director failed to take into account the passage of time and attendant difficulties in obtaining corroborative documentation of unlawful residence. While the passage of time has been considered, the applicant has failed to provide probative and credible evidence of her continuous residence in the United States for the duration of the requisite period. Moreover, the inconsistencies regarding the applicant's address of residence in the United States during the requisite period are material to her claim in that they have a direct bearing on the applicant's residence in the United States during the requisite period. No evidence of record resolves these inconsistencies.

On appeal, counsel contends that the director's termination is "arbitrary and meritless because the sole basis of denial was that they are very general in nature." Counsel also asserts that the director erred in applying a quantitative analysis rather than a qualitative analysis as required by law. However, upon a *de novo* review of all of the evidence in the record, the director correctly determined that the evidence submitted by the applicant has not established that she is eligible for the benefit sought. The various statements currently in the record which attempt to substantiate the applicant's residence in the United States during the statutory period are not objective, independent evidence such that they might overcome the inconsistencies in the record regarding the applicant's claim that she maintained continuous residence in the United States throughout the statutory period, and thus are not probative.

Based on the foregoing, the applicant has failed to resolve the inconsistencies in the record with independent objective evidence. Furthermore, the applicant has failed to establish 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*. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis. As the applicant has not overcome the basis for the termination of status, the appeal must be dismissed.

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