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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

L1



Date: **AUG 26 2011**

Office: LOS ANGELES

FILE: 

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. 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.

A handwritten signature in dark 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, 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 Los Angeles office. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

On June 26, 2007, the director of the Los Angeles office denied the I-687 application, finding that the applicant had not established by a preponderance of the evidence that she had continuously resided in the United States in an unlawful status for the duration of the requisite period. On October 15, 2009, the AAO sustained the appeal and remanded the case to the director.¹ Upon further review, the AAO determined, in accord with the director, that the evidence submitted by the applicant does not establish by a preponderance of the evidence that she continuously resided in the United States in an unlawful status for the duration of the requisite period. Therefore, on July 8, 2011, the AAO *sua sponte* reopened the proceeding and withdrew its decision dated October 15, 2009.

On July 8, 2011, the AAO sent the applicant a follow-up communication, informing her that additional documentation was required in order to complete the adjudication of her appeal, and requesting that the applicant provide additional evidence. Specifically, the applicant was asked to provide evidence that she entered the United States before January 1, 1982, and that she continuously resided in the United States in an unlawful status since such date for the duration of the requisite period. The applicant has submitted an additional witness statement in response to the AAO's request. 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.²

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).

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) means until the date the

¹ On remand, the director issued two requests for evidence (RFE) and a notice of intent to deny (NOID) the application, and the applicant, through counsel, submitted a timely response to the RFE and rebuttal to the NOID.

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).

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 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 established 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. The AAO has reviewed each document in its entirety to determine the applicant's eligibility. 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 period, it shall not be discussed.

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

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, which would reflect and corroborate the extent of those associations, and demonstrate that they were 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. For instance, witnesses [REDACTED] do not state that they know of the applicant's presence in the United States during the requisite period, although they testify regarding the presence of one or both of her parents in the United States during that period. Therefore, these witness statements are of minimal probative value. [REDACTED] has submitted six witness statements, but the witness does not explain how he dates his initial meeting with the applicant in the United States, or specify social gatherings, other special occasions or social events when he saw and communicated with the applicant during the requisite period. The witness does not provide sufficient details that would lend credence to his claimed knowledge of the applicant's residence in the United States during the requisite period. For these reasons the AAO finds that the witness statements of [REDACTED] do not indicate that their assertions are probably true.

The applicant submitted an immunization record listing several vaccines administered to her on July 17, 1985. In addition, the applicant submitted records from the Santa Ana [REDACTED] School District,

which she attended after the requisite statutory period,³ listing the same vaccination date. However, since the immunization record and the school record do not list where the vaccines were administered on July 17, 1985, these documents are not evidence in support of the applicant's residence in the United States during the requisite period.⁴

The record contains copies of 1983 joint federal and California state income tax returns for the applicant's parents, listing the applicant as their dependent child. The state return was signed in April 1985. However, the income tax returns list the applicant's residence address as being on [REDACTED] in Santa Ana.⁵ The information in the federal return and state returns is inconsistent with the applicant's testimony in the I-687 application, in which she states that she resided on [REDACTED] in Santa Ana for the duration of the requisite period, and does not list an address on [REDACTED] during that period.

The record contains copies of a 1984 W-2 form and 1984 federal and California state income tax returns for the applicant's mother.⁶ The record also contains a copy of 1985, 1986 and 1987 federal and California state income tax returns for the applicant's mother. None of these tax returns list the applicant as a dependent child.

In response to the AAO's request for additional information, the applicant has submitted a statement from [REDACTED] her father. The applicant's father states that the 1983 tax returns list his brother's address on [REDACTED] as the applicant's address, even though the applicant never lived there, because the returns requested a refund and, "I knew my refund check was safer arriving at my brother's. . ." However, the testimony of the witness is inconsistent with the 1985, 1986 and 1987 federal and state income tax returns, which also request refunds but list the residence address on [REDACTED]

The remaining evidence in the record is comprised of the I-687 application and a Form I-485, application to adjust to permanent resident status under the Legal Immigration Family Equity (LIFE) Act filed in 2001. The AAO finds in its *de novo* review that the record of proceedings contains materially inconsistent statements from the applicant regarding her absences from the United States during the requisite statutory period.

In the instant I-687 application the applicant listed one absence from the United States during the requisite statutory period, from June 19 to June 27, 1987.

In a Form I-485, application to adjust to permanent resident status under the Legal Immigration Family Equity (LIFE) Act, filed in 2001, the applicant stated that she last arrived in the United States on June 27, 1987.

³ The record reveals that the applicant first attended the Santa Ana [REDACTED] School District on March 20, 1989.

⁴ The AAO notes that the school records list an incorrect date of birth for the applicant of December 7, 1982.

⁵ The 1983 state income tax return also lists a rental residence address on [REDACTED] in Santa Ana. In the I-687 application the applicant lists this address as her residence for the duration of the requisite period.

⁶ The AAO notes that the 1984 state and federal and state income tax returns of the applicant's mother also list a residence address on [REDACTED] in Santa Ana, and a rental residence address on [REDACTED] in Santa Ana.

At the time of an interview on February 15, 2007, the applicant stated that she has not been outside of the United States since her entry into the United States in 1981.

At the time of an interview on September 19, 2003, the applicant stated that, although she does not recall the date of her first entry into the United States since she was too young, she has not left the United States since her first entry.⁷

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. The inconsistencies regarding the dates the applicant was absent from the United States are material to the applicant's 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. 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.

Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director 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 upon the foregoing, 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.

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

⁷ In a statement dated March 15, 2007, the applicant stated that she was absent from the United States in November 1988. This statement is inconsistent with the applicant's statement in the I-687 application, filed in 2005, and the I-485 application, filed in 2001, that her last entry into the United States was on June 27, 1987. While outside of the requisite period, the inconsistency calls into question the veracity of the applicant's testimony concerning her continuous residence in the United States during the requisite period.