



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

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

In Re: 24727252

Date: MARCH 2, 2023

Appeal of Kendall Field Office Decision

Form I-687, Application for Status as a Temporary Resident

The Applicant seeks review of a decision terminating her temporary resident status under section 245A of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255a.¹

The Director of the Kendall Field Office in Miami, Florida terminated the Applicant's temporary resident status, concluding that she was not eligible for such status. The matter is now before us on appeal. 8 C.F.R. § 245a.2(u)(2)(i).

The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

U.S. Citizenship and Immigration Services (USCIS) may terminate status of a noncitizen lawfully admitted for temporary residence under section 245A(a)(1) of the Act at any time, if it appears that the noncitizen was not in fact eligible for such status, becomes ineligible, or does not timely apply to adjust status from temporary to permanent resident. Section 245A(b)(2) of the Act.

To be eligible for temporary resident status, a noncitizen must establish, in part that they entered the United States before January 1, 1982, and continuously resided in the United States in an unlawful status since such date, until the date of filing the application. Section 245A(a)(2) of the Act. In addition, the noncitizen must have been physically present in the United States from November 6, 1986, until the date of filing the application. Section 245A(a)(2) of the Act; 8 C.F.R. § 245a.2(b). For the purposes of establishing residence and physical presence under the CSS/Newman (LULAC) settlement agreements, the term "until the date of filing" means until the date the noncitizen attempted

¹ In addition to section 245A of the Act, there are the implementing settlement agreements in *Catholic Social Services, Inc., et al., v. Ridge, et al.*, CIV. NO. S-86-1343-LKK (E.D. Cal. Jan. 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. Feb. 17, 2004) (CSS/Newman (LULAC) settlement agreements). "LULAC" stands for League of United Latin American Citizens.

to file a completed Form I-687 and fee or was caused not to timely file during the original legalization application period from May 5, 1987, to May 4, 1988.²

Applicants for temporary resident status under section 245A of the Act have the burden of proving by a preponderance of the evidence that they resided in the United States for the requisite periods, are admissible to the United States under the provisions of section 245A of the Act and are otherwise eligible for such status. 8 C.F.R. § 245a.2(d)(5). Pursuant to the regulations at 8 C.F.R. § 245a.2(d)(6), to meet their burden of proof applicants must submit evidence of eligibility apart from their own testimony.

II. ANALYSIS

The issue on appeal is whether the Applicant has demonstrated that her temporary resident status was improperly terminated on the grounds identified by the Director.

The record reflects that the Applicant was granted temporary resident status in 2008 when USCIS approved the Form I-687 she filed in 2005 pursuant to the CSS/Newman (LULAC) settlement agreements (2005 Form I-687). She timely applied to adjust her status from temporary to permanent resident, but the Director found the record below insufficient to establish that the Applicant was eligible for a grant of temporary resident status and issued a notice of intent to revoke it (notice). In the notice, the Director advised the Applicant that the previously submitted evidence did not show, as required that she entered the United States before January 1, 1982, and continuously resided in the United States in an unlawful status since such date, until she attempted to apply (or was discouraged from applying) for legalization under section 245A of the Act. Specifically, the Director pointed out the lack of primary documents to support the Applicant's claim of a nonimmigrant entry in July 1981, as well as inconsistent information about her U.S. residence and employment. In response, the Applicant asserted that she met her burden of proof to establish the unlawful residence in the United States since before January 1, 1982, because she submitted a 1981 Florida sales receipt, affidavits attesting to her presence and employment in the United States since 1981, and documents to show that she continuously resided in the United States throughout the 1980s. Nevertheless, the Director terminated the Applicant's temporary resident status explaining that this evidence did not establish she entered the United States in 1981, nor was it adequate to show that she continuously and unlawfully resided in the United States since January 1, 1982.

On appeal, the Applicant does not submit any additional evidence. She avers that contrary to the Director's determination the previously provided documents do establish that she has been residing in the United States since before January 1, 1982. The Applicant further states that the termination of her temporary resident status was improper because "there is no contradictory/opposing evidence to negate anything [she] has stated or submitted." We have reviewed the entire record, including the Applicant's statements on appeal, and for the following reasons conclude that she has not overcome the basis for the termination of her temporary resident status.

The record reflects that in May 1983 the Applicant was issued a U.S. nonimmigrant visa in Colombia, and that she was admitted to the United States with that visa as a nonimmigrant visitor for business

² CSS settlement agreement, paragraph 11, page 6; Newman (LULAC) settlement agreement, paragraph 11, page 10.

(B-1) on May 29, 1983. The record further shows that the Applicant was subsequently admitted to the United States with the same nonimmigrant visa in July 1986. In 1991, she submitted an Affidavit for Determination of Class Membership in *League of United Latin American Citizens v. INS (LULAC)* lawsuit (the class membership affidavit) and a Form I-687 (1991 Form I-697) to register as a LULAC class member.³ In the class membership affidavit and on the 1991 Form I-687 the Applicant attested that she first entered the United States as a nonimmigrant visitor for pleasure (B-2) at [redacted] Florida in July 1981, that she violated her nonimmigrant status by working without a permit, that she had been continuously residing in the United States in an unlawful status since before January 1, 1982, and that a legalization office in Florida rejected her legalization application in the summer of 1987 because of her 1983 and 1986 foreign travel.

To corroborate her claim of unlawful residence in the United States since January 1, 1982, the Applicant submitted a carbon copy of a Spanish-language sales receipt with a handwritten “9-2-81” date, affidavits, and documents dated in and after 1983. The sales receipt, issued by a company located in [redacted] Florida reflects a purchase of over \$1000, and lists the Applicant’s and her former spouse’s names and their [redacted] Florida address. However, a close inspection of the receipt date reveals that the number “81” indicating the year has been traced over and is distinct in appearance from the numbers indicating the month and day of the purchase. As this indicates that the date on the receipt may have been altered, we cannot give it significant probative weight in establishing that the Applicant was in the United States in 1981. Furthermore, even if we were to afford the sales receipt full evidentiary weight notwithstanding the indicia of alteration, it would be sufficient only to show that the Applicant and her spouse claimed a [redacted] address in September 1981 for purposes of a single purchase agreement, and not that she resided in the United States unlawfully since January 1, 1982. Aside from the sales receipt, the Applicant did not provide any other primary documentation to corroborate her claim of the 1981 U.S. entry and her continuous unlawful residence in the country since that time.⁴

In evaluating the sufficiency of the evidence, USCIS must consider the passage of time and attendant difficulties in obtaining corroborative documentation of unlawful residence, and may not deny the application solely because an applicant did not submit evidence other than affidavits. *See* CSS settlement agreement, paragraph 11, page 6; Newman (LULAC) settlement agreement, paragraph 11, page 10; Memorandum from William R. Yates, Associate Director for Operations, USCIS HQOPRD 70/6.1.1, *Legalization Filings Pursuant to the CSS and LULAC Settlement Agreements*, 3 (March 23, 2004). However, the weight to be given any affidavit depends on the totality of the circumstances, and affidavits containing specific, personal knowledge of the applicant’s whereabouts during the time period in question should be given greater weight than fill-in-the-blank affidavits providing generic information. *Id.*

³ “Skeletal” Forms I-687 filed during the 1989-1991 application period were submitted solely for class membership determination and employment authorization purposes, not for merit adjudication; they were to be administratively closed without further action. *See* Memorandum from Donald Neufeld, Acting Associate Director, Domestic Operations, USCIS, HQ 70/10.3, *Skeleton Form I-687 Found in A-Files Filed Between 1989 and 1991* (Nov. 5, 2008).

⁴ We note that the record includes a copy of the Applicant’s passport issued in Colombia in July 1986, which indicates that she was previously was a holder of a Colombian passport issued to her in July 1981. The Applicant does not explain why she did not submit a copy of that passport to prove her claimed July 1981 nonimmigrant entry into the United States or any other evidence of her 1981 admission, while she did provide Arrival/Departure Forms I-94 to show she was admitted to the United States as a nonimmigrant in 1983 and 1986, presumably with her 1981 Colombian passport.

In ascertaining the probative value of the affidavits in this case, we are further guided by *Matter of E-M-*, 20 I&N Dec. 77, 80-81 (Comm'r 1989), holding that "in determining the weight of an affidavit, it should be examined first to determine upon what basis the affiant is making the statement and whether the statement is internally consistent, plausible, or even credible. Most important is whether the statement of the affidavit is consistent with the other evidence in the record."

Considering the totality of the circumstances in this case, we cannot give significant weight to the previously submitted 1991 fill-in-the-blank affidavits attesting to the Applicant's residence in the United States since before 1982, as they are neither sufficiently detailed, nor consistent with the Applicant's own representations concerning her employment and residence in the United States.

The Applicant represented on her 1991 Form I-687 that from July 1981 through January 1982 she lived in [] Florida, and that for the next five years, from February 1982 through July 1987, she resided at two different addresses in New Jersey. The Applicant further indicated that in August 1987 she returned to [] and has been residing there since that time. One of the affiants, who identified herself as the Applicant's friend living in Florida, attested that "to her personal knowledge" the Applicant resided in [] from 1981 to 1982 at the address she listed on the 1991 Form I-687. However, the affiant did not explain how she knew of the Applicant's residence at that particular address during this period, nor did she provide information about her own residence in the United States in the 1980s. We cannot therefore give the affiant's general statement significant weight in establishing that the Applicant likely entered the United States in 1981 and resided in the country unlawfully as of January 1982 and thereafter.

Another individual indicated generally in her affidavit that the Applicant had been residing in [] Florida from July 1981 to "present," noting that although she did not see the Applicant from February 1982 until July 1987, she "constantly talked on the phone with her because [the Applicant] lived in New York." The affiant's testimony, however, raises questions about the extent of her personal knowledge about the Applicant's whereabouts during this period, as the affiant admits she did not see the Applicant for a period of over five years and only had telephonic contact with her. Furthermore, while the affiant indicated the Applicant resided in New York during the 1982-1987 period, the Applicant claimed she lived in New Jersey within that timeframe. Lastly, the affiant did not provide information about her own residence in the United States at the time.

The third fill-in-the-blank affidavit attesting to the Applicant's residence in the United States in the early 1980s was executed by a [] resident who indicated that she employed the Applicant as a babysitter at a salary of \$200 a month "beginning on 8/81-9 and continuing to 9/82." The affidavit does not include sufficient detail about the terms and circumstances of the Applicant's employment to be given significant probative weight. Specifically, neither the Applicant nor the individual who claimed to have employed her provided information about the location where the Applicant worked, the children she cared for, or any other information about her duties and the manner in which she was paid. Furthermore, the Applicant's statement that she moved to New Jersey in February 1982 appears inconsistent with the affiant's claim that she continued to employ the Applicant in Florida through September 1982. The Applicant does not explain who her employer was or where she lived when she babysat for her, and whether she continued to work for the same Florida-resident employer after she moved to New Jersey. We also note that on her 2005 Form I-687, the Applicant indicated that from

July 1981 through December 1986 she was self-employed as a housekeeper without specifying where she worked. Because of these deficiencies and unresolved inconsistent information we cannot give this affidavit significant weight in establishing the Applicant's entry and residence in the United States during the relevant period.

To summarize, the affidavits, all of which were executed over 10 years after the Applicant's claimed entry and commencement of residence in the United States do not provide information about the affiants' own residence in the 1980s and the basis for their statements that the Applicant lived in the United States at a particular address or addresses during the specific time periods. Furthermore, some of the affiants' statements are inconsistent with the Applicant's own testimony, and the Applicant has not resolved the inconsistencies. Considering all these factors, the affidavits have limited probative value and are insufficient to demonstrate by a preponderance of the evidence that the Applicant entered the United States prior to January 1, 1982, and continuously resided in the United States in an unlawful status since January 1, 1982.

The record contains two additional fill-in-the-blank affidavits executed by the Applicant's relatives, and submitted in support of her 2005 Form I-687. However, those affidavits also are also not probative of the Applicant's residence in the United States since January 1, 1982. The Applicant's aunt attested that she met the Applicant in [] Florida at a family reunion in August 1981, but she did not provide information about the Applicant's presence in the United States afterwards. The Applicant's cousin, in turn stated that she knew that the Applicant entered the United States before January 1982, because the Applicant called her from [] Florida in August 1981. However, the cousin did not include any information about the Applicant's whereabouts after August 1981. Thus, neither affidavit is sufficient to establish that the Applicant likely resided in the United States in an unlawful status as of January 1982.

The remaining evidence consists of documents issued at the time of or after the Applicant's entry into the United States in May 1983, including her Form I-94 Arrival/Departure record, her daughter's school records, bank documents, money order receipts, and similar documents. While this evidence indicates that the Applicant likely resided in the United States after May 1983, it is inadequate to support her claim of unlawful residence in the United States since January 1, 1982.

We acknowledge the Applicant's assertion that there is no evidence to negate her claims of entry into the United States before January 1, 1982, and unlawful residence in the United States since that time. However, to meet her burden of proof in these proceedings, the Applicant must submit evidence of eligibility apart from her own testimony. The Applicant has not met this burden, because the documents and affidavits she submitted are insufficient to show that she entered the United States before January 1982 and continuously resided in the United States in an unlawful status since January 1, 1982, and through the date she attempted to apply for legalization.

III. CONCLUSION

The Applicant has not established she was eligible for temporary resident status under section 245A of the Act, because she has not demonstrated that she entered the United States prior to January 1, 1982, and continuously resided in the United States in an unlawful status since that date until she

attempted to apply for legalization in 1987. Consequently, she has not overcome the basis for the termination of her temporary resident status.

ORDER: The appeal is dismissed.