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U.S. Citizenship
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FILE:

MSC-05-202-16550

Office: LOS ANGELES

Date: **AUG 15 2007**

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. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

Robert P. Wiemann, 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 District Director, Los Angeles, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined the applicant had not provided additional evidence in response to the Notice of Intent to Deny (NOID) issued on November 25, 2005. The NOID stated that the applicant had failed to establish that she continuously resided in the United States for the requisite period. It went on to explain that this finding was made because the documents submitted did not establish that she had entered in the United States before January 1, 1982 and resided in a continuous unlawful status throughout the requisite period. Though the applicant submitted a letter of disagreement as a response to the NOID, the director stated that this letter did not constitute new evidence, nor did it contain new facts that supported the applicant's claim of class membership or that of maintaining continuous residence in the United States during the requisite period. As a result, the director denied the application.

On appeal, the applicant submits a brief and re-submits evidence previously submitted to establish her continuous residence in the United States during the requisite period, stating that this previously submitted evidence has established, by a preponderance of the evidence, that the applicant entered the United States before January 1, 1982 and maintained continuous residence throughout the requisite period.

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 Immigration and Nationality Act (Act), 8 U.S.C. § 1255a(a)(2).

An applicant applying for adjustment to temporary resident status must 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).

For purposes of establishing residence and presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the alien attempted to file a completed Form I-687 application and fee or was caused not to timely file, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

An alien applying for adjustment of status 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. *See* 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).

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.

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 (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 has furnished sufficient credible evidence to demonstrate that she resided in the United States from prior to January 1, 1982 through the date she attempted to file a Form I-687 application with the Service in the original legalization application period of May 5, 1987 to May 4, 1988. Here, the submitted evidence is not relevant, probative, and credible.

The record shows that the applicant first completed a Form I-687, Application for Status as a Temporary Resident to establish Catholic Social Services (CSS) class membership, signing this Form I-687 on September 30, 1991. She also submitted a Form I-687, Application for Status as a Temporary Resident and a Form I-687, CSS/Newman Class Membership Worksheet, on April 20, 2005. The applicant signed both of these applications under penalty of perjury certifying that the information she provided is true and correct.

Part 16 of the applicant's most recent Form I-687, submitted in 2005 pursuant to the CSS/Newman settlement agreements, asks the applicant to list the date she last entered the United States. The applicant responded that she last entered the United States on November 10,

1981. Part 20 asks the applicant to list her father's name and whether he is living or deceased. Here, the applicant indicated that her father's name was [REDACTED], and that he passed away in 1990. Part 30 requests the applicant to list her residences in the United States since her first entry. The applicant responded that during the requisite period she resided at [REDACTED] Anaheim, California from November 1981 to November 1985 and then at [REDACTED], Castro Valley, California from December 1985 to May 1993. Part 32 of the applicant's Form I-687 requests the applicant to list her absences from the United States since entry. The applicant responded that she had never left the United States. Part 33 of this application requests the applicant to list her employment since entry. The applicant responded that during the requisite period she was employed by [REDACTED] who is now deceased in Anaheim, California as a babysitter from November 1981 to November 1985 and then by [REDACTED] in Castro Valley, California as a babysitter from December 1985 to May 1993.

The applicant's Form I-687 application submitted to establish class membership in 1991 provides that she last entered the United States on June 30, 1987. This is not consistent with the date the applicant provided when asked the same question on the Form I-687 she submitted pursuant to the CSS/Newman settlement agreements submitted in 2005, where she showed her last date of entry into the United States as November 10, 1981.

The applicant's Form I-687 application submitted to establish class membership in 1991 provides that her father's name is [REDACTED] and that he passed away on June 6, 1987. The applicant indicated on that application that as a result of her father passing away she left the United States on June 6, 1987 and remained outside the country until June 30, 1987. In support of this is a sworn affidavit signed by [REDACTED] on October 1, 1991 stating that Mr. Alacon took the applicant to the airport on June 6, 1987 so that she could go home to bury her father. This is not consistent with the information the applicant provided when asked the same question regarding her father on the Form I-687 that she submitted pursuant to the CSS/Newman settlement agreements in 2005. On that Form I-687, she indicated that her father passed away in 1990.

The applicant's Form I-687 application submitted to establish class membership in 1991 provides that she resided at: [REDACTED], Castro Valley, California from December 17, 1981 to June 15, 1988; at [REDACTED], Mission Viejo, California from June 15, 1988 to May 15, 1989; at [REDACTED] Santa Ana, California from May 15, 1989 to June 15, 1990; and at [REDACTED] Anaheim, California from June 15, 1990 until September 30, 1991. This is inconsistent with the information on the applicant's Form I-687 application, submitted pursuant to the CSS/Newman settlement agreements in 2005, which states that she resided at [REDACTED], Anaheim, California from November 1981 to November 1985 and at [REDACTED], Castro Valley, California from December 1985 to May 1993.

Part 34 of the applicant's Form I-687 application submitted establish class membership in 1991 requests her to list all of her affiliations or associations with clubs and organizations such as

churches. The applicant responded that this was not applicable. However, submitted with the applicant's Form I-687 application from 2005, filed pursuant to the CSS/Newman settlement agreements is a receipt for tithing \$100.00 on July 13, 1986. This receipt does not contain information regarding the organization or church this money was given to.

Part 35 of the applicant's Form I-687 application submitted establish class membership in 1991 requests the applicant to list her absences from the United States since entry. The applicant responded that she visited the Philippines to attend the funeral of her father from June 6, 1987 to June 30, 1987. This information is inconsistent with the applicant's Form I-687 application, filed pursuant to the CSS/Newman settlement agreements, which states that the applicant was never absent from the United States.

Part 36 of the applicant's Form I-687 application submitted establish class membership in 1991 requests the applicant to list her employment since entry. The applicant responded that she was employed by: Mr. and Mrs. [REDACTED] in Castro Valley, California as a babysitter from December 17, 1981 to June 15, 1988; Mt. View Cottage in Mission Viejo, California from June 15, 1988 to May 15, 1989; A&L Care Home in Santa Ana, California from May 15, 1989 to June 15, 1990; and as a live in baby sitter for an unnamed family in Anaheim, California from June 15, 1990 until September 30, 1991, the day she signed her Form I-687. This employment information is inconsistent with the applicant's Form I-687 application, filed in 2005 pursuant to the CSS/Newman settlement agreements, which states that she was employed by [REDACTED] Alarcon who is now deceased in Anaheim, California as a babysitter from November 1981 to November 1985 and then [REDACTED] in Castro Valley, California as a babysitter from December 1985 to May 1993.

Subsequent to filing a Form I-687 application in 1991, the applicant was interviewed on October 7, 1991 by an INS officer to establish her class membership. During this interview the applicant reiterated that her first entry into the United States occurred on December 17, 1981 and that she left the United States in June of 1987 to attend the funeral of her father in the Philippines. This information is inconsistent with the applicant's Form I-687 application, filed in 2005 pursuant to the CSS/Newman settlement agreements. The information contained in that application indicates the applicant was working in the United States starting in November of 1981 and that her father did not pass away until 1990.

On September 30, 1991 the applicant submitted a personal declaration with her Form I-687. This declaration states in pertinent part that the applicant was living at [REDACTED] in Building I-208 in Anaheim, California at the time she signed the declaration; that the applicant first arrived in the United States on December 17, 1981 through Mexico by car; that upon arrival the applicant went to visit relatives in Los Angeles; that in 1987 the applicant learned that her father had passed away and she went to the Philippine Consulate to obtain a travel document to attend his funeral, remaining outside of the country from June 6, 1987 to June 30, 1987; and that the applicant called a local immigration office during the original filing date but was told that she did not qualify because she had left the United States to attend her father's funeral in June of

1987. Though previously stated, it is noted that the applicant's Form I-687 submitted in 2005 indicates that her father did not pass away until 1990.

The record also contains a signed, sworn statement in which the applicant testified on October 26, 2005 that she worked with [REDACTED] from November 1981 to November 1985. It is noted that the beginning date for this employment is approximately one month prior to the date that the applicant previously stated she entered the United States in the applicant's declaration submitted to Immigration and Naturalization Services and sworn on October 1, 1991.

The information provided by the applicant on her two Form I-687 applications and sworn statements is materially inconsistent regarding her date of entry, her father's date of death, her residences, absences from the United States, and her places and dates of employment during the requisite period.

Further evidence submitted by the applicant in support of her claim to have maintained continuous residence in the United States during the requisite period includes the following:

- A letter from [REDACTED] and [REDACTED] that is not dated. This letter states that [REDACTED] have lived at [REDACTED] in Castro Valley, California continuously since 1977 and that they have personal knowledge that the applicant arrived in the United States in 1981. The letter goes on to say that the applicant lived "off and on" with them until late 1985, at which time she lived with their family from December 1985 to May, 1993. It is noted that this information conflicts with information regarding the applicant's employment in her Form I-687 that was submitted in 1991, in which states that she began working for the [REDACTED] family in December 1981.
- An affidavit from [REDACTED] stating that the applicant left the Philippines to come to the United States on November 10, 1981. This affidavit establishes that the affiant did not enter the United States until after the requisite period, on January 1, 1990. Because the affiant was not physically present in the United States during the requisite period, she does not possess personal knowledge that establishes that the applicant maintained continuous residence in the United States during that period. Therefore, this affidavit does not contain information that is relevant to the matter at hand.
- Photocopies of photographs of the applicant with various people. Though the applicant has indicated that these photographs were taken in the United States and she has indicated years associated with each photograph, these notes, written by the applicant, are not amendable to verification.
- A Social Security earnings form listing the applicant's earnings from 1991 to 1995 and then from 1999 to 2004. These years do not correspond with the requisite period for which the applicant is required to establish that she maintained continuous residence in the United States. Therefore, they are not relevant to the matter at hand.
- Photocopies of envelopes from the Philippines.

- A photocopy of an envelope addressed to [REDACTED], listing the address of the recipient as [REDACTED], Castro Valley, California 94552. This envelope is from New Zealand and contains two stamps, one bearing a duck that reads “brown teal” in the amount of 60 cents. The other bearing an orange that reads, “citrus fruit” in the amount of 20 cents. This letter is postmarked March 9, 1988.
- A signed letter from [REDACTED] stating that [REDACTED] is the applicant’s partner and that they have a child together. This letter states that [REDACTED] met the applicant in 1993, after the requisite period. Therefore, the affiant is found to be incapable of providing first-hand verification that the applicant entered the United States prior to January 1, 1982, or that she maintained continuous residence during the requisite period as the affiant confirmed he did not know the applicant until 1993.
- A Form 1040 from 2004. 2004 does not correspond with the requisite period for which the applicant is required to establish that she maintained continuous residence in the United States. Therefore, this document is not relevant to the matter at hand.
- An employment letter from [REDACTED] stating that the applicant has worked for her since January of 2002. These years do not correspond with the requisite period for which the applicant is required to establish that she maintained continuous residence in the United States. Therefore, this document is not relevant to the matter at hand.
- The following receipts:
 - Outpatient services from Eden Hospital in Castro Valley, California, signed by [REDACTED] listing her as the person responsible for charges and listing the applicant’s name as the patient’s name. This receipt is from February 23, 1983.
 - A receipt from [REDACTED] listing [REDACTED] as the patient. This receipt is dated December 1983.
 - A receipt that appears to be for the applicant from November 11, 1984 for sixty dollars. It is not clear who issued this receipt.
 - A sales receipt for goods in the amount of \$103.94. This receipt lists the applicant’s last name, an address of [REDACTED] and the date as August 17, 1984. The vendor is not listed on this receipt.
 - A receipt from [REDACTED] in Castro Valley, California listing the applicant’s last name and the address [REDACTED], Castro Valley, Ca. This receipt is dated July 24, 1985.
 - A receipt from [REDACTED] in San Francisco, California for Gucci sunglasses. This receipt lists the applicant’s last name and the address [REDACTED]. It is dated June 25, 1985.
 - A receipt for “Daily Review Group” listing the applicant’s name and an address of [REDACTED]. This receipt is dated July 17, 1986.
 - A tithing receipt in the amount of \$100.00 dated July 13, 1986 listing the applicant’s name and an address of [REDACTED].
 - A receipt listing the applicant’s last name dated February 19, 1987.
 - A return receipt with the applicant’s name and an address of [REDACTED] Castro Valley, California. This form is not dated.

Though the applicant has submitted these documents with her Form I-687, she has not established by a preponderance of the evidence that she maintained continuous residence in the United States during the requisite period.

The numerous inconsistencies found in the applicant's record seriously undermine the credibility of her claim of residence in the United States for that period. These inconsistencies also call into question the credibility of all documents submitted in support of such claim. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Affidavits and other documents submitted by the applicant do not overcome these inconsistencies. Doubt cast on any aspect of the evidence may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. 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, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

On appeal, the applicant resubmitted a brief and asserted that she entered the United States in November 1981 and continuously resided in this country since that time. She also submitted the supporting documents noted above. To meet her burden of proof, an applicant must provide evidence of eligibility apart from her own testimony. 8 C.F.R. § 245a.2(d)(6). Though the applicant did supply affidavits from individuals attesting to her maintaining continuous residence in the United States, information in these affidavits conflicts with information in the record submitted by and sworn to by the applicant. Therefore, these affidavits carry minimal weight.

The applicant has failed to provide any independent and objective evidence to resolve the inconsistencies noted by the director. The applicant's failure to provide any other evidence to establish her continuous residence in the United States during the requisite period renders a finding that she has failed to satisfy her burden of proof, as required by 8 C.F.R. § 245a.2(d)(5). The applicant has not submitted sufficient evidence to establish that her claim is "probably true" pursuant to *Matter of E-M-*, *supra*.

The absence of sufficiently detailed supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of this claim. 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 applicant's contradictory statements on her applications and her reliance upon documents with minimal probative value, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the date she attempted to file a Form I-687 application 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.