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U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED]  
MSC 06 090 12144

Office: NATIONAL BENEFITS CENTER

Date: DEC 12 2007

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: SELF-REPRESENTED

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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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 Director, National Benefits Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined the applicant failed to submit sufficient evidence to establish that she had continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that she attempted to file a Form I-687, Application for Status as a Temporary Resident, with the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS) in the original legalization application period of May 5, 1987 to May 4, 1988. Therefore, the director determined that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and denied the application.

On appeal, the applicant disputes the director's findings and submits additional affidavits in an effort to overcome the adverse decision.

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.

In support of the application, which was filed on December 29, 2005, the applicant submitted three affidavits from affiants all of whom claimed to have known the applicant five, six, and twelve years, respectively. However, none of the affiants claimed to have known the applicant during any portion of the statutorily relevant time period. Therefore, the director issued a notice of intent to deny (NOID) on January 31, 2006. The director clarified which time period was of relevance in the present matter and informed the applicant that she failed to submit adequate documentation to establish her continuous unlawful residence during that time. The applicant was allowed 30 days in which to respond to the director's adverse finding.

Although the applicant acknowledged the director's request for additional evidence, her response consisted entirely of the three affidavits submitted initially in support of the application. As none of the affidavits addressed the time period in question, the director properly issued a notice dated June 14, 2006 denying the application.

On appeal, the applicant submits a letter claiming that she submitted her own credible testimony with regard to her continuous residence. The applicant also submits the following additional documentation:

1. A notarized letter dated July 7, 2006 from [REDACTED] and [REDACTED] claiming that they have known the applicant since 1982. The couple claimed that the applicant often lived with

them. The address currently provided for Mr. and Mrs. [REDACTED] was in Woburn, Massachusetts.

2. A notarized letter dated July 8, 2006 from [REDACTED], whose residential address was also in Woburn, Massachusetts. Mr. [REDACTED] claimed to have known the applicant since 1982 when she lived on [REDACTED], Massachusetts.
3. A notarized letter dated July 6, 2006 from [REDACTED], Massachusetts. Ms. [REDACTED] claimed that she has known the applicant since 1985.
4. A notarized letter dated July 8, 2006 from [REDACTED] of Arlington, Massachusetts. Ms. [REDACTED] claimed that she and her family have known the applicant since 1986 when she lived in the Boston area.

Although two other letters were submitted, neither addressed the applicant's U.S. residence during the relevant statutory time period. Therefore, they need not be specifically addressed in this discussion.

In summary, the evidence provided by the applicant to corroborate her claim is deficient in a number of ways. First, while the affidavits in Nos. 1 and 2 above are from affiants who claim to have known the applicant since 1982, neither provides the exact date of his or her first encounter with the applicant such as to convey the understanding that the applicant has resided in the United States as of January 1, 1982. Second, none of the above affiants specifically provided the applicant's residential address during the time they claim to have been acquainted with her; nor did any of the individuals provided any other information that can be verified and compared to the information provided by the applicant.

Lastly, it is noted that all four individual indicate that they are residents of Massachusetts. Three out of four of those individuals claim to have known the applicant during her purported residence in Massachusetts. However, these claims are in direct conflict with the information provided by the applicant in No. 30 of the Form I-687, where the applicant listed a total of three residences in the United States all of which were purportedly in New York, not Massachusetts. 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). In the present matter, the applicant neither resolves nor even acknowledges the considerable inconsistency between the information she provides and the information provided by individuals making statements on the applicant's behalf.

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 absence of sufficiently detailed supporting documentation, which contradicts, rather than supports, the information provided by the applicant herself, it is concluded that the applicant 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-*, 20 I&N Dec. 77. 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.