U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

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[redacted]

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FILE: [redacted] Office: NEW YORK Date: DEC 17 2007

MSC-05-181-31964

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:

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, New York. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant submitted a Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (Act), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet. The director determined 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. The director denied the application, finding that the applicant had not met her burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, the applicant asserts her claim of eligibility for Status as a Temporary Resident.

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)(1) means until the date the 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. See CSS Settlement Agreement paragraph 11 at page 6 and 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 period, 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).

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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to establish continuous residence 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 from May 5, 1987 to May 4, 1988. Here, the applicant has failed to submit any evidence to support her claim of residence in this country for the period in question.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on March 30, 2005. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant listed as her addresses: [redacted] Newport, Rhode Island, from December of 1980 to December of 1983; 1 A Southmayo, Newport, Rhode Island, from January of 1984 to December of 1985; and 98 Albertson Place, Mineola, New York, from January of 1985 to July of 1988. At part #31 of the Form I-687 application where the applicant was asked to list all affiliations or associations she indicated "None." And, at part #33 of the Form I-687 application where applicants were asked to list all employment in the United States since entry, the applicant claimed that she was self-employed as a home attendant from 1981 to the filing of her application, which is dated March 30, 2005.

In an attempt to establish her continuous unlawful residence in this country prior to January 1, 1982, the applicant provided the following affidavits:

- An affidavit from [redacted] in which she stated that she has known the applicant since January of 1981, and that she met the applicant through a native Brazilian cultural group in New York. She further stated that the applicant assisted her in learning Portuguese, and recommended that she visit Brazil during her layovers as a flight attendant for American Airlines. The affiant also stated that she and the applicant have become very close friends, sharing in family celebrations and taking care of one another over time. She

concludes by stating that the applicant is a person of outstanding character, exceedingly honest, hard working, and that she lives a tranquil life. Here, it is not clear how frequently the affiant had contact with the applicant during their alleged ten (10) year relationship. The affiant has not provided evidence that she herself was present in the country during the requisite period. Though not required to do so, the affiant has not provided proof of her identity with this affidavit. It is also noted that the affiant fails to list the applicant's address(es) in the United States during the requisite time period. The affidavit lacks detail that would lend credibility to the claimed relationship with the applicant. Because this affidavit is lacking in detail, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

- An affidavit from [redacted] in which he stated that he has known the applicant since September of 1987, when he met her at a Brazilian Street Fair on 46th Street in Manhattan, New York. The affiant further stated that they quickly realized that they shared in common their nationality, cultural interests, religious beliefs, and mutual friends in Rio de Janeiro. There is no evidence to demonstrate that the affiant was acquainted with the applicant prior to January 1, 1982, to corroborate the applicant's claim of residence in the United States during that requisite period. The affiant has failed to specify the frequency with which he saw the applicant during the requisite period. The affiant has not provided evidence that he himself was present in the United States during the requisite period. It is also noted that the affiant fails to list the applicant's address(es) in the United States during the requisite time period. Because this affidavit is significantly lacking in detail it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

The director issued a Notice of Intent to Deny (NOID) dated February 10, 2006, to the applicant. The director stated in the NOID that although the affidavits from Anne Nikitiades and Cesar Toscano attest to the applicant's presence in the United States, the affiants did not include any proof that they were present in the country during the statutory period, or proof of their direct personal knowledge of the events being attested to. The director informed the applicant that she had 30 plus 3 days in which to respond to the NOID. The record does not show that the applicant responded to the director's request for evidence in a timely manner.

The director denied the application on April 5, 2006, after determining that the applicant had not submitted sufficient evidence to meet her burden of proof and that she was, therefore, denying the application for the reasons stated in the NOID.

On appeal, the applicant states that the decision is not supported by the facts because she in fact responded to the NOID on March 15, 2006, which is within the 33 days allowed.

Although the applicant claims that she submitted her response to the director's NOID in a timely manner, the record of proceedings demonstrates that this evidence was received by the Long Island District Office on

April 17, 2006. Although this evidence was received subsequent to the director's decision dated April 5, 2006, the AAO will review it as evidence on appeal.

In an attempt to establish her continuous unlawful residence in this country prior to January 1, 1982, the applicant provided the following affidavits:

- An affidavit from [redacted] in which he states that he has known the applicant since February of 1980 when they met at a carnival in Rio de Janeiro through common friends. The affiant further states that he and the applicant have been in touch with each other since she came to the United States in December of 1980. The affiant concludes by stating that he has taken many trips to Brazil, which provided him an opportunity to meet with the applicant's family. The applicant submits copies of the affiant's New York State Driver License and a photograph of the affiant and herself. Although the affiant states that he communicated with the applicant after the applicant relocated to the United States from Brazil, he does not provide any contemporaneous evidence to substantiate that claim. The affiant does not claim to have ever seen the applicant in the United States, nor does he specify the frequency with which he communicated with the applicant. Here, the affiant has not provided evidence that he himself was present in the United States during the requisite period. Although the affiant attested to the applicant's residence in the United States since 1980, he failed to provide any relevant and verifiable testimony, such as the applicant's address(es) of residence in this country, to corroborate the applicant's claim of residence in the United States since prior to January 1, 1982. Because this affidavit is significantly lacking in detail it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

- An affidavit from [redacted] in which he states that the applicant lived with his uncle [redacted] now deceased, at [redacted], apartment # 19, New York, New York, in the 1980s. The affiant further states that he has been a friend of the applicant's family for many years. The applicant submits copies of the affiant's New York State Driver License and photographs of the affiant and herself. Here, the affiant's statements are inconsistent with the applicant's statement on her Form I-687, at part #30 where she was asked to list all residences in the United States, in that she does not list the above noted address. This inconsistency calls into question the affiant's ability to confirm that the applicant resided in the United States during the requisite period. Because this affidavit contains testimony that conflicts with what the applicant showed on her Form I-687, doubt is cast on assertions made in the affidavit. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. 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, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). Because this affidavit is significantly lacking in detail, and it