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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

[Redacted]

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FILE:

[Redacted]

Office: BOSTON

Date:

JUL 31 2007

MSC-06-098-10393

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, Boston, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined the applicant had not demonstrated 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, counsel for the applicant asserts that the applicant's Form I-687, Application for Status as a Temporary Resident, contains erroneous information regarding her visit to the Dominican Republic. Counsel maintains that the applicant states she never left the United States from August 16, 1982 until October 7, 1982.

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. 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 director's notice of decision provides that the applicant failed to meet her burden of proof in establishing entry and continuous unlawful residency in the United States prior to January 1, 1982. The director's decision indicates that the applicant testified she traveled to the Dominican Republic in August 1982 and resided there until she re-entered the United States in October 1982. The applicant's record corroborates her testimony of her absence from the United States. The applicant's record contains a Form I-687, Application for Status as a Temporary Resident, signed by the applicant on September 5, 1988. Part 35 of this application requests the applicant to list her absences from the United States since her entry. The applicant responded that she visited the Dominican Republic for "Family Problems" from August 16, 1982 until October 7, 1982, which is an absence for a period of fifty-two (52) days. The applicant's record also contains a declaration in Spanish with a certified English translation, dated October 6, 1988. This declaration provides:

On February 27, 1981, I entered the United States across Aguadilla, P. Rico . . . After a stay of 15 months, I returned to my country, where I applied for and obtained a B-2 visa, with which I returned to the US . . . In November of 1987 I met with some people who were helping illegal aliens in Methuen M[A] located in a C[a]tholic church. One of the people from the Church asked me questions and I explained my situation. This person, whose name I did not write down, told me once and [sic] had left the US on 8/16/82, I was disqualifie[d] from the benefits of Amnesty.

The applicant's record indicates that she presented this information to establish her class membership in the League of United Latin American Citizens (LULAC) class action lawsuit.

An alien shall be regarded as having resided continuously in the United States if at the time of filing an application for temporary resident status, no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, through the date the application is filed, unless the alien can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the alien was maintaining residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.1(c). The applicant's record indicates that she had an absence from the United States for a period of fifty-two days. This absence is in excess of the forty-five day period delineated in the regulations. If the applicant's absence exceeds the forty-five day period allowed for a single absence, it must be determined if the untimely return of the applicant to the United States was due to an "emergent reason." Although this term is not defined in the regulations, *Matter of C-* defines emergent as "coming unexpectedly into being." 19 I&N Dec. 808 (Comm. 1988). The applicant's Form I-687 application indicates that she traveled to the Dominican Republic during this time period because of "family problems" and failed elaborate with any other information.

On appeal, counsel for the applicant asserts that, "[REDACTED] through an individual named [REDACTED] submitted an I-687 with erroneous information as to a visit to the Dominican Republic. [REDACTED] states that she never left the United States from August 16, 1982 until October 7, 1982." Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Furthermore, the petitioner is obligated to clarify the inconsistent and conflicting testimony by independent and objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Simply asserting that the Form I-687 application contains erroneous information does not qualify as independent and objective evidence.

On January 5, 2006, the applicant filed with CIS a Form I-687, Application for Status as a Temporary Resident, and a Form I-687 Supplement, CSS/Newman (LULAC) Class Membership Worksheet. Part 32 of this application requests the applicant to list her absences from the United States since her entry. The applicant responded that she traveled to the Dominican Republic to

visit her parents on the following dates: December 1991, August 1995, June 1996 and October 1999. The applicant indicated on her application form that each visit was for the duration of less than one month. Notably, the applicant neglected to provide that she was absent from the United States from August 16, 1982 until October 7, 1982, as she had previously indicated. The applicant was interviewed for her Form I-687 application on May 23, 2006. The CIS adjudication officer's interview notes provide that the applicant testified during this interview that she left the United States from August 1982 until October 1982. The applicant subsequently submitted with her application a notarized statement, dated May 31, 2006, from [REDACTED] which provides:

During the years of 1981 and 1982, [REDACTED] and I were roommates in Lawrence, Massachusetts; [REDACTED] rented a room out of my apartment during 1981 and 1982; During 1981 and 1982, [REDACTED] did not leave the United States for her native country of Dominican Republic; [REDACTED] did not leave the United States for any other country during 1981 and 1982.

This statement is not independent and objective evidence to overcome the inconsistencies in the applicant's record for two reasons. Firstly, this statement is dated after the applicant had her Form I-687 interview, during which she testified that that she was absent from the United States from August 1982 until October 1982. Evidence that the petitioner creates after CIS points out the deficiencies and inconsistencies in the petition will not be considered independent and objective evidence. Independent and objective evidence would be evidence that is contemporaneous with the event to be proven. Secondly, the applicant previously submitted with her Form I-687 application a letter from [REDACTED] dated January 20, 2003, which provides, "[REDACTED] a resided in my home at [REDACTED] in Lawrence, Massachusetts from April 21, 1981 to May 10, 1982." This time period is outside of the applicant's August 16, 1982 absence from the United States. [REDACTED] has not provided information to indicate his first hand knowledge of the applicant's residence in the United States during the time period of August 16, 1982 until October 7, 1982. Moreover, [REDACTED] letter is inconsistent with the applicant's Form I-687 application, which provides that she resided at [REDACTED] Lawrence, Massachusetts from February 1981 until August 1988. This inconsistency draws into question whether the applicant actually resided with [REDACTED] during the requisite period.

Aside from the applicant's fifty-two day absence form the United States, she has failed to provide sufficient evidence of her residence in the United States during the entire requisite period. 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). Here, the evidence submitted by the applicant is not credible and probative. The applicant submitted various documents with her Form I-687 application, however, this proceeding with focus solely on documentation that demonstrates 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. The applicant submitted with her application the two

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aforementioned statements from ██████████; a letter from ██████████ pastor with Our Lady of Lourdes Parish; and a letter from ██████████ with Apolos Imports Exports, Inc.

The letter from ██████████, dated January 22, 2003, provides, “Alba has been in the United States for 15 of her 38 years.” This letter states that the applicant has been in the United States for fifteen years prior to January 22, 2003. Based on this information, ██████████ has indicated that the applicant has resided in the United States since 1987. This letter is therefore inconsistent with the applicant’s claim, on her Form I-687 application, of continuous residence in the United States since February 1981. Because of this inconsistency, this letter is of no probative value to establish the applicant’s residence in the United States.

The letter from ██████████ provides, ██████████ [h]as been a preferred [c]ustomer since 1985. She purchased furniture from us and all paid in time frame with out late Payment penalty [sic].” ██████████’s letter lacks significant detail because it fails to provide any substantial information on the applicant’s accounts with Apolos Imports Exports, Inc. This letter does not indicate the dates the applicant purchased her furniture. The letter also does not indicate the source of ██████████’s knowledge of the applicant’s purchases, such as invoices or other records. Therefore, this letter is of minimal value as corroborating evidence of the applicant’s continuous residence in the United States during the requisite period.

The letters from ██████████ are also of minimal value as corroborating evidence of the applicant’s continuous residence in the United States during the requisite time period. The letter from ██████████ dated January 20, 2003, provides that the applicant resided with him during the period of April 21, 1981 to May 10, 1982. However, this letter fails to provide detailed information ██████████’s relationship with the applicant during and subsequent to this time period. Therefore, these letters are not probative evidence of the applicant’s residence in the United States during the requisite time period.

An applicant for temporary resident status has the burden of proving by a preponderance of the evidence that she had resided in the United States during the requisite periods. 8 C.F.R. § 245a.2(d)(5). 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). The deficiencies in the applicant’s documentation lead to a finding that the applicant has failed to meet her burden of proof in this proceeding.

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.