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

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[Redacted]

FILE: [Redacted]
MSC 05 176 10045

Office: HOUSTON

Date: NOV 19 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:

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

The district 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 district 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 asserts that the applicant has submitted affidavits from individuals who can attest to her presence in the United States before January 1, 1982. Counsel contends that the applicant has established continuous residence in the United States by a preponderance of the evidence and submits additional evidence relating to the applicant's residence in the United States during 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 submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on March 25, 2005. At part #30 of the Form I-687 application where applicants are instructed to list all residences in the United States since first entry, the applicant indicated that she resided at “██████████ Houston, Texas” from September 1981 to October 1982, at “██████████, Houston, Texas” from October 1982 to May 1983, at “██████████ Houston, Texas” from May 1983 to October 1985, at “██████████ Houston, Texas” from October 1985 to December 1987, and at “██████████ Pasadena, Texas” from June 1988 to February 1990. At part #32, where applicants are instructed to list all absences outside the United States since initial entry, the applicant indicated that she was in Mexico due to her father’s illness from December 1987 to June 1988. At part #33, where applicants are instructed to list all employment in the United States since initial entry, the applicant indicated that she worked as a housekeeper for ██████████ located at ██████████, Houston, Texas” from November 1981 to December 1988.

At her interview with a CIS officer on July 5, 2005, the applicant stated that she first entered the United States without inspection near Laredo, Texas, in September 1981. When the officer asked her about her absences outside the United States during the requisite period, the applicant stated that she was in Mexico for two or three weeks from December 1987 to January 1988.

In an attempt to establish continuous residence in the United States during the requisite period, the applicant submitted an affidavit dated July 21, 1991, from [REDACTED], a resident of Pasadena, Texas. [REDACTED] stated that he had known the applicant since December 1987 when he met her at [REDACTED]. [REDACTED] stated that the applicant was residing at [REDACTED] "as" when he first met her in 1987.

The applicant also submitted an affidavit dated July 21, 1991, from [REDACTED], a resident of Houston, Texas. [REDACTED] stated that he first met the applicant in October 1982 because they were neighbors in the same apartment complex. [REDACTED] stated that the applicant was residing at [REDACTED] at the time he met her.

The applicant provided an affidavit dated July 21, 1991, from [REDACTED], a resident of Houston, Texas. [REDACTED] stated that the applicant worked for her from November 1981 to December 1988. [REDACTED] provided the applicant's addresses in the United States from September 1981 to December 1987.

The applicant included an affidavit dated July 14, 1991, from [REDACTED]. [REDACTED] stated that she had known the applicant since September 1981. [REDACTED] stated that the applicant resided with her and her family in Houston, Texas. However, she did not provide the addresses where she was residing when the applicant lived with her and her family.

The applicant submitted an affidavit dated February 15, 2005, from [REDACTED], a resident of Pasadena, Texas. [REDACTED] stated that she met the applicant in 1987 at the legalization office where the applicant attempted to file a Form I-687. However, [REDACTED] failed to provide any specific, detailed and verifiable information such as the frequency of her contact with the applicant or the applicant's addresses in the United States during the requisite period.

The applicant also submitted an affidavit dated February 18, 2005, from [REDACTED], a resident of Houston, Texas. [REDACTED] stated that she first met the applicant in 1987 through a friend. However, [REDACTED] failed to provide any specific, detailed and verifiable information such as the frequency of her contact with the applicant or the applicant's addresses in the United States during the requisite period.

It is noted that the record contains a previous Form I-687 signed by the applicant on March 2, 1991. At part #35 of the application, where applicants are instructed to list all absences outside the United States during the requisite period, the applicant indicated that she was in Mexico visiting her father who was ill from December 1987 to June 1988. The applicant also stated in the supporting "Form for Determination of Class Membership in *CSS v. Meese*" that she was in Mexico from December 1987 to July 1988.

On January 14, 2004, the applicant filed a Form I-485 application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act. During her LIFE interview, the applicant stated under oath that she was in Mexico for a "family reunion" from December 1987 to June 1988. The applicant signed a sworn statement certifying under penalty of perjury that her statement regarding her absence in Mexico was true and correct.

On August 24, 2005, the district director informed the applicant of her intention to deny the application because the applicant had failed to establish continuous residence in this country throughout the requisite period. The district director specifically noted that the applicant's sworn statement during her interview that she was in Mexico from December 1987 to January 1988 contradicted her statement Form I-687 that she was in Mexico from December 1987 until June 1988. The district director granted the applicant 30 days to submit evidence to rebut the contradiction noted above and to provide additional evidence to corroborate her claim of continuous residence in the United States during the requisite period.

Counsel, in response, stated that the applicant was only outside the United States from December 1987 to January 1988. Counsel asserted that the dates of absence listed on her Form I-687 were due to clerical error and stated that the applicant "would have never applied if she had in fact been out of the United States for six months. This was a simple mistake that was done by an inexperienced person." Counsel submitted an affidavit from the applicant dated September 1, 2005 in which she stated that the notary who filled out the Form I-687 on her behalf incorrectly indicated that she was outside the United States from December 1987 to June 1988, on both the original Form I-687 she signed in 1991 and the current Form I-687. She reiterated her claim that she departed the United States in December 1987 and returned in January 1988.

The applicant submitted a letter dated June 29, 2005, from [REDACTED], pastor of Saint Thomas More Catholic Church, located at "[REDACTED]" [REDACTED] stated that the applicant had been a member of his parish since 1999. This letter does not relate to the applicant's residence in the United States during the requisite period.

The district director denied the application on November 14, 2005, because the applicant had failed to establish continuous residence in the United States throughout the requisite period.

On appeal, counsel states that the applicant explained the contradiction in her claimed dates of absence outside the United States in her personal affidavit dated September 1, 2005. Counsel repeats his assertion that the discrepancy in the applicant's claimed dates of outside the United States is the result of clerical error on the part of the person who completed her Form I-687 on her behalf. Counsel contends that the applicant has established continuous residence in the United States by a preponderance of the evidence.

Counsel submits copies of affidavits previously submitted in support of the application. Counsel also submits a second affidavit dated December 22, 2005, from [REDACTED] a [REDACTED] states that she has known the applicant since September 1981. However, [REDACTED]

does not provide any specific and verifiable information such as the applicant's addresses in this country during the requisite period.

The applicant's explanation that the discrepancy in her claimed dates of absence outside the United States is due to clerical error is not persuasive. The applicant stated on her 1991 Form I-687, on the accompanying class action lawsuit determination worksheet, in a sworn statement during her LIFE interview, and on the current Form I-687 that she was in Mexico from December 1987 to June 1988. It is noted that the applicant's 1991 Form I-687 was completed by [REDACTED] but the current Form I-687 was filled out on the applicant's behalf by [REDACTED], the applicant's attorney of record. Counsel asserts that the current Form I-687 was completed using the information provided on the 1991 Form I-687. However, the applicant's sworn statement under penalty of perjury during her LIFE interview that she was in Mexico from December 1987 to June 1988 cannot be attributed to clerical error.

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).

If the applicant's absence exceeded the 45-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-*, 19 I&N Dec. 808 (Comm. 1988), holds that emergent means "coming unexpectedly into being."

In the absence of any other information, it is concluded that the applicant was in Mexico for approximately six months, from December 1987 to June 1988 as she has previously stated on her 1991, her current Form I-687, and during her LIFE interview. As the applicant's absence exceeded the 45-day period allowed for a single absence, it must be determined if the applicant's untimely return of the applicant to the United States was due to an "emergent reason."

The applicant has variously indicated that she was in Mexico visiting family, attending a family reunion, and visiting her sick father. However, she has not provided any evidence relating to her absence in Mexico. In the absence of clear evidence that the applicant intended to return within 45 days, it cannot be concluded that an emergent reason "which came suddenly into being" delayed the applicant's return to the United States beyond the 45-day period. Therefore, it cannot be concluded that she resided continuously in the United States throughout the requisite period.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period, and has submitted attestations that lack sufficient verifiable detail to corroborate her claim. Furthermore, the applicant was outside the United

States for six months and has failed to establish that an emergent reason that came unexpectedly into being delayed her return beyond 45 days.

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, her reliance upon documents with minimal probative value, and her six-month absence outside the United States during the requisite period, 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 he 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.