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U.S. Citizenship  
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FILE: [Redacted]  
MSC-05-210-10021

Office: COLUMBUS

Date: SEP 07 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.

A handwritten signature in black ink, appearing to read "Robert P. Wieman".

Robert P. Wieman, 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, Cleveland District Office, Columbus Sub-Office, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined the evidence submitted was not sufficient to establish the applicant continuously resided in the United States since she entered in 1981 and that she was physically present in the United States since November 6, 1986 until filing her application for temporary resident status.

On appeal, the applicant reaffirmed her eligibility for temporary resident status, reiterated the difficulty in obtaining evidence because she entered the United States at the age of three, and provided additional documentation in support of her application.

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 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 applicant 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 applicant 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 and 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 Immigration and Naturalization 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 Citizenship and Immigration Services (CIS) on April 28, 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 the following addresses during the requisite period: [REDACTED] New York, New York from September 1981 to April 1982; [REDACTED] New York, New York from April 1982 to March 1984; and 2965 [REDACTED] Bronx, New York from March 1984 to January 2001. The applicant initially provided no additional documentation in support of her application.

In response to a Notice of Intent to Deny (NOID) issued on December 8, 2005, the applicant submitted a declaration from [REDACTED], who identified himself as the best friend of the applicant's father. [REDACTED] declared that the applicant has been in the United States since she came with her father in 1980. [REDACTED] stated that the applicant's father was killed in 1986 and, "[a]fter the death of her father, [the applicant] lived with her father's brother and his wife . . ." This declaration is found to be inconsistent with the applicant's statements on Form I-687. Specifically, the applicant indicated she first began residing in the United States in September 1981, while [REDACTED] stated that the applicant entered the United States in 1980. In addition, the applicant stated

that she moved her residence in 1984 and then did not move her residence again until 2001. In contrast, [REDACTED] stated that the applicant began living with her uncle in 1986. These inconsistencies call into question whether [REDACTED] can actually confirm the applicant's residence throughout the requisite period.

On appeal, the applicant reaffirmed her eligibility for temporary resident status; reiterated the difficulty in obtaining evidence since she entered the United States at the age of three; and provided an affidavit from her cousin, [REDACTED]. In this affidavit, [REDACTED] affirmed that the applicant came to the United States in September 1981. [REDACTED] explained his knowledge of the date the applicant entered the United States by stating that he was still living in Senegal when the applicant left for the United States. [REDACTED] did not claim to have been present in the United States during the requisite period. He claimed no other basis for having first-hand knowledge of the applicant's continuous residence in the United States, such as repeated telephone or mail correspondence or by word-of-mouth from other relatives. [REDACTED] also failed to include any details regarding the applicant's period of residence in the United States, such as her past addresses. The affiant's lack of first-hand knowledge of the period of residence to which he attests limits the value of this affidavit in confirming the applicant's residence 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 affidavits that conflict with her statements on Form I-687 or contain no claim that the affiant has first-hand knowledge of the applicant's residence throughout the requisite period. Specifically, [REDACTED] affidavit is inconsistent with the applicant's statements and [REDACTED] did not claim to have first-hand knowledge of the applicant's residences during the requisite period.

The absence of sufficiently detailed and consistent 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 contradictory statements contained in the applicant's I-687 application and supporting affidavits, and the applicant's 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.