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FILE: [REDACTED]  
MSC-05-249-10618

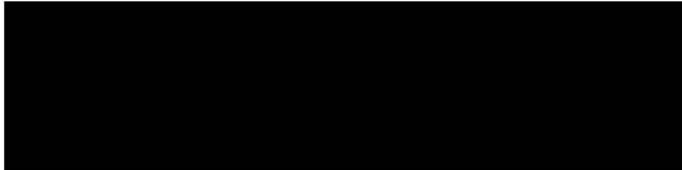
Office: BOISE

Date: **APR 08 2008**

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Temporary Resident Status under Section 245A of the  
Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Records Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

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, Helena District Office, Boise, Idaho Sub-Office. The applicant appealed the decision to the Administrative Appeals Office (AAO). The AAO rejected the appeal as untimely filed. The applicant submitted evidence indicating that the appeal was untimely filed due to Citizenship and Immigration Services (CIS) error. The AAO now reopens the case *sua sponte*. 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 denied the application because he found the evidence submitted with the application was insufficient to establish eligibility for Temporary Resident Status pursuant to the terms of the CSS/Newman settlement agreements. The director noted that the applicant had failed to respond to the Notice of Intent to Deny (NOID).

On appeal, counsel for the applicant indicated that the applicant had responded to the NOID, and stated that the applicant has provided clear and convincing evidence of her 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 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).

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) 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. CSS Settlement Agreement paragraph 11 at page 6; 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.* at 80. 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, 431 (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 meet her burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687 application and Supplement to CIS on June 6, 2005. At part #4 where applicants were asked to list other names used or known by, the applicant listed [REDACTED]. 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 only [REDACTED] Calexico, California from July 1981 to June 1987 during the requisite period. At part #33 where applicants were asked to list all employment in the United States since entry, the applicant listed only employment as a laborer for [REDACTED] FLC from July 1981 to May 1987 during the requisite period, and stated “(Husband lived here).”

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided several documents that fail to show that she resided in the United States during the requisite period. The applicant provided copies or originals of multiple envelopes that are addressed to the applicant or an individual named [REDACTED]. The envelopes contain illegible postage cancellation date stamps. Therefore, these documents fail to show that the applicant resided in the United States during the requisite period.

The applicant provided a copy of a card from 1986 addressed to "Victoria" from "Pauline and Ernie." Since it fails to list the applicant's name and address, this document is found not to be relevant to determining whether the applicant resided in the United States during the requisite period.

The applicant provided documentation related to Disneyland and the American Red Cross. Since none of these documents contains the applicant's name or address, they are found not to be relevant to determining whether the applicant resided in the United States during the requisite period.

The applicant provided a copy of an MCI telephone bill. The bill is undated, but the applicant provided a copy of the bill inside a window envelope that contains a postage date stamp of September 10, 1982. The telephone bill is addressed to [REDACTED]. The address listed is [REDACTED] Jerome, Idaho. Since the applicant's name is not listed on the bill, it does not constitute evidence that she resided in the United States during the requisite period. In addition, it is noted that the [REDACTED] address is listed on the applicant's Form I-687 as the address where she resided from March 1992 until May 1996. This is inconsistent with the telephone bill provided by the applicant to show that she resided at the [REDACTED] address in 1982. This inconsistency casts doubt on the applicant's claim to have resided in the United States during the requisite period.

The applicant also provided a printed receipt listing the words "[REDACTED]" "2-15-82," "FICA," "STATE," and "FED," in handwriting. Since this document does not contain the applicant's name or address, it is found not to be relevant to the determination of whether she resided in the United States during the requisite period.

The applicant also provided multiple rent receipts. Two of these, dated February 10, 1985 and October 4, 1986, listed the name [REDACTED] and the address [REDACTED]. These receipts fail to list the applicant's name. Therefore, they do not show that she resided in the United States during the requisite period. In addition, it is noted that on her Form I-687 the applicant listed the [REDACTED] address as the address where she resided from May 1996 to July 2001. This is inconsistent with the rent receipts provided to show that the applicant resided at the [REDACTED] address in 1985 and 1986. This inconsistency casts additional doubt on the applicant's claim to have resided in the United States during the requisite period. The applicant provided an additional rent receipt that does not list her name or address and, as a result, fails to confirm that she resided in the United States during the requisite period. Lastly, the applicant provided a rent receipt for July 1, 1982 listing the name [REDACTED] and listing the [REDACTED]. Again, since the applicant's name is not listed on the receipt, it does not confirm that she resided in the United States during the requisite period. In addition, as mentioned above, the applicant listed the 114 West [REDACTED] address on her Form I-687 and indicated that she resided there between March 1992 and May 1996. This is inconsistent with the rent receipt provided by the applicant to show that she resided at the [REDACTED] address during 1982. This inconsistency calls into question the applicant's claim to have resided in the United States during the requisite period.

The applicant also provided multiple attestations in support of her application. She provided a declaration from [REDACTED], president of Sun Valley Harvest, Inc. This declaration states that the applicant worked for Sun Valley Harvest, Inc. “for the seasons from 1981 to 1987.” The declaration fails to indicate whether the applicant worked year-round from 1981 to 1987. The declaration also does not conform to regulatory standards for letters from employers as stated in 8 C.F.R. § 245a.2(d)(3)(i). Specifically, the declaration does not include the applicant’s address at the time of employment.

The applicant provided an affidavit from [REDACTED], which states that [REDACTED] rented a trailer from the affiant’s husband located at [REDACTED] in Jerome, Idaho from March 1982 to January 1985. This affidavit does not list the applicant’s name and, therefore, does not confirm that she resided in the United States during the requisite period. In addition, to the extent that the affidavit is provided by the applicant to show that she resided at the [REDACTED] address from 1982 to 1985, the affidavit is inconsistent with the applicant’s Form I-687 where she indicated she did not move to the [REDACTED] address until March 1992. This inconsistency casts further doubt on the applicant’s claim to have resided in the United States during the requisite period.

Similarly, the applicant provided an affidavit from [REDACTED], which states that [REDACTED] rented a house from the affiant at the [REDACTED] address from February 1985 to December 1998. Again, to the extent that the affidavit is provided by the applicant to show that she resided at the [REDACTED] address from 1985 to 1998, the affidavit is inconsistent with the applicant’s Form I-687 where she indicated she did not move to that address until May 1996. This inconsistency casts further doubt on the applicant’s claim to have resided in the United States during the requisite period.

The applicant provided an affidavit from [REDACTED], which states that the affiant’s association with the applicant’s family began in 1986. This affidavit fails to specifically state that the applicant resided in the United States during the requisite period.

In denying the application, the director noted that the evidence submitted with the application was insufficient to establish eligibility for Temporary Resident Status pursuant to the terms of the CSS/Newman settlement agreements. The director noted that the applicant had failed to respond to the NOID.

On appeal, counsel for the applicant indicated that the applicant had responded to the NOID, and stated that the applicant has provided clear and convincing evidence of her residence in the United States during the requisite period. It is noted that the record indicates the applicant filed a response to the NOID within one month of issuance of the NOID. The director’s error in failing to acknowledge the NOID is harmless because the AAO conducts a *de novo* review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(d)(6). The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) (“On appeal from or review of the initial decision,

the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”); *see also*, *Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO’s *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

In summary, the applicant provided contemporaneous evidence that fails to show that she resided in the United States during the requisite period or is inconsistent with her Form I-687. The applicant provided attestations that do not conform to regulatory standards, are inconsistent with her Form I-687, or fail to confirm that she resided in the United States during the requisite period. The declaration from [REDACTED] does not conform to regulatory standards. The affidavits from [REDACTED] and [REDACTED] do not list the applicant’s name and are inconsistent with her Form I-687. The affidavit from [REDACTED] fails to confirm that the applicant resided in the United States during the requisite period.

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 contradictions between the application and the documents submitted, and given 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 for the requisite period 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.