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U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED] Office: New York Date: APR 21 2008  
MSC-05-273-14431

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: Self-represented

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 District Director, New York, 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. Further, the director determined that the applicant has not submitted sufficient relevant, probative, and credible evidence to explain or answer the questions raised, concerning the applicant's residency, as stated in the Notice of Intent to Deny (NOID) dated July 11, 2006. 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.

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. 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 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 Citizenship and Immigration Services (CIS) on June 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 showed her first address in the United States to be [REDACTED], Brooklyn, New York, from November 1981 to May 2004. Similarly, at part #33, she showed her first employment in the United States to be for [REDACTED] Manhattan, New York, as a “companion” from January 1999 to December 1999.

According to the Form I-687 application, part #3, the applicant was born on July 29, 1981.

The applicant submitted no documentation with her Form I-687 application.

The director issued a NOID to the applicant on November 15, 2005. The director informed the applicant that 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.

In response the applicant submitted four letter statements in the nature of character references for the applicant.

- A letter dated December 5, 2005, was submitted by [REDACTED] of Palm Coast, Florida, that he has known the applicant all her life.
- A notarized letter dated December 7, 2005, was submitted by [REDACTED] of the Bronx, New York, that she has known the applicant “throughout most of her life.”
- A notarized undated letter was submitted by [REDACTED] of Brooklyn, New York, that he has known the applicant for over ten years.

The letters do not contain any information relating to the director's NOID request. There is no information in the letters relating to the issue of when the applicant first entered the United States and no information relating to where and when the applicant resided since the date of her entry. It is noted that none of the declarants stated with any specificity where they first met the applicant, how they date their acquaintance with her, or the frequency of their contact. Therefore the letters have slight probative value as evidence in this case.

The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that may be provided to establish proof of continuous residence in the United States during the requisite period. This list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts, or letters. The applicant did not provide any other documentation other than the character references. An applicant may also submit "any other relevant document." 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The director denied the application for temporary residence on August 16, 2006. In denying the application, the director found that the applicant had provided contradictory testimony on the issue if the applicant filed or attempted to file an application for temporary residence status during May 5, 1987 through May 4, 1988. The director found that the applicant had no documents pertaining to the applicant's entry into the United States (from Canada) or to show entry into Canada before January 1, 1982 using a passport. The director stated that the applicant's original passport that was used to enter Canada was not available and was not submitted to CIS.

On appeal, the applicant asserts that her application was not given the consideration it deserved based on the evidence and statement submitted, and submits no evidence in support of her appeal.

In summary, the applicant has not provided any evidence of residence in the United States relating to the requisite period or of entry to the United States before January 1, 1982 except for her own assertions, unsupported by independent objective evidence. The statements lack credibility and probative value for the reasons noted. As stated by the director, and as explained above, her contradictory testimony also raises doubts as to her current claims of residency.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, as well as the inconsistencies and contradictions noted in the record, seriously detract from the credibility of her 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 inconsistencies in the record and the lack of credible supporting documentation, it is concluded that he has failed to establish by a preponderance of the evidence that he has continuously resided in an unlawful status in the United States for the requisite period 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.