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**U.S. Citizenship  
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FILE: [REDACTED]  
MSC-06-101-13449

Office: NATIONAL BENEFITS CENTER

Date: **APR 23 200**

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 Benefits 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, National Benefits Center. 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. 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.

On appeal, the applicant asserts that she has submitted affidavits that attest to her residence in the United States during the statutory period. The applicant furnishes a notarized letter as additional corroborating evidence.

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 Citizenship and Immigration Services (CIS) on January 9, 2006. At part #30 of the Form I-687 application where applicants are asked to list all residences in the United States since first entry, the applicant showed her first address in the United States to be in Stamford, Connecticut from March 2005 until present. The eligibility requirement for temporary resident status is that an applicant 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). Pursuant to the CSS/Newman Settlement Agreements, “until the date of filing” 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. The applicant fails to provide any information on her Form I-687 application to establish her continuous residence in the United States during this requisite period.

The applicant submitted with her Form I-687 application a copy of the biographical page of her passport. While this document establishes the applicant's identity, it does not relate to her continuous residence in the United States during the requisite period.

On February 17, 2006, the director, National Benefits Center, issued a Notice of Intent to Deny (NOID) to the applicant. The NOID provides that the applicant failed to submit documentation to establish her eligibility for Temporary Resident Status. The applicant was afforded thirty (30) days to provide additional evidence in response to the NOID. Pursuant to 8 C.F.R. § 245a.2(d)(6), to meet her burden of proof, an applicant must provide evidence of eligibility apart from her own testimony. The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous 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.

An applicant may also submit "any other relevant document." 8 C.F.R. § 245a.2(d)(3)(vi)(L). In rebuttal to the NOID, the applicant submitted an affidavit from [REDACTED] and a notarized letter from [REDACTED]

The affidavit from [REDACTED], dated March 8, 2006, in part provides:<sup>1</sup>

I have first met [REDACTED] sometime in 1981 when I was invited to a party by my close friends [REDACTED] and [REDACTED]. She was brought to the party by her parents [REDACTED] and [REDACTED]. [REDACTED] was then working as a driver of one of the diplomats of the Permanent Mission of Indonesia to the United Nations. During this party, we struck a beautiful and lasting friendship. Although, we don't see each [sic] very often, we tried [sic] to communicate over the telephone every now and then. So I know that Aprilia was growing up to be a young and intelligent daughter.

This affidavit from [REDACTED] contains several apparent deficiencies. First, the location of Ms. [REDACTED]'s first meeting with the applicant is unknown. [REDACTED] fails to establish that she first became acquainted with the applicant in the United States. Second, [REDACTED] fails to provide any relevant information on her "beautiful and lasting" friendship with the applicant. Relevant details would include information on the frequency and type of contact she had with the applicant in the United States during the requisite period. Third, [REDACTED]'s assertion that they communicate over the telephone "every now and then" again fails to specify the frequency of her contact with the applicant in the United States during the requisite period. Given these significant deficiencies, this affidavit cannot be afforded any weight as probative evidence.

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<sup>1</sup> Although this affidavit is dated March 8, 2006, it was notarized on March 7, 2006.

The notarized letter from [REDACTED], dated March 8, 2006, provides, "I met [REDACTED] a while ago, that time I needed somebody to baby-sit my kids, and she offered me help. She does the babysitting for me since then." This letter similarly contains several apparent deficiencies. [REDACTED] fails to provide any relevant information on her personal knowledge of the applicant's residence in the United States during the requisite period. Relevant information would include the date and location of [REDACTED]'s first acquaintance with the applicant. Additionally, [REDACTED] fails to provide any information on the frequency of her contact with the applicant in the United States during the requisite period. Given these significant deficiencies, this letter cannot be afforded any weight as probative evidence.

On August 13, 2006, the director issued a notice of denial to the applicant. In denying the application, the director found that the statements from [REDACTED] and [REDACTED] do not include the authors' identification, proof that they were present in the United States during the requisite period, or any proof that they have direct personal knowledge of the events and circumstances of the applicant's residency. The director determined that the applicant failed to submit credible documents, which would constitute by a preponderance of the evidence that she resided in the United States during the requisite period.

On appeal, the applicant asserts that she has submitted credible affidavits that attest to her residence in the United States during the statutory period. The applicant furnished as additional evidence a notarized letter from [REDACTED] with copies of [REDACTED]'s identity documents. The applicant also furnished copies of the identity documents of [REDACTED] and [REDACTED].

The notarized letter from [REDACTED], dated February 24, 2006, in part provides:

Sometimes [sic] in 1981, [REDACTED] was able to bring his whole family to the United States. I was invited to their small welcome dinner and I met his wife [REDACTED] and their cute little baby girl, [REDACTED]. I was always invited to their house, since [REDACTED] mother [sic] loves to cook for everyone. Few years after, their family moved to another state and we lost contact, until Christmas of 2001 . . .

This letter contains several apparent deficiencies. [REDACTED] fails to provide relevant information on her personal knowledge of the applicant's residence in the United States during the requisite period. [REDACTED]'s assertion that she was "always invited" to the applicant's home is a vague statement. [REDACTED] fails to provide information on the frequency of her contact with the applicant and the location of the applicant's home. Additionally, [REDACTED]'s assertion that she lost contact with the applicant when the applicant moved after a "few years" to "another state" is another vague statement. [REDACTED] fails to provide information on the duration of her contact with the applicant and the location of the applicant's move. Given these deficiencies, this letter cannot be afforded any weight as probative evidence.

The applicant furnished copies of the following identity documents: [REDACTED]'s driver license, dated February 26, 2004; [REDACTED]'s United Nations grounds pass, dated March 2, 1973; [REDACTED]'s United States Department of State identification card; and [REDACTED]'s United Nations identification cards, dated December 31, 1977, December 5, 1988, December 31, 1999, April 30, 2003, and December 31, 2004. While these documents verify the authors' identity and presence in the United States, only the documents from [REDACTED] and [REDACTED] relate to the requisite period. The identity documents from [REDACTED] and Ms. [REDACTED] are proof of the authors' presence in the United States since prior to January 1, 1982.

Although the applicant provided documents verifying [REDACTED] and [REDACTED] identity and presence in the United States, she has not overcome the grounds for denial. The applicant has been given the opportunity to amend the deficiencies in [REDACTED] affidavit and [REDACTED]'s letter. However, on appeal the applicant resubmitted the same statements from [REDACTED] and [REDACTED]. The applicant submitted a letter from [REDACTED] as additional evidence. However, this letter is also deficient for lack of detail. Finally, the applicant's own testimony on her Form I-687 fails to provide any evidence of her residence in the United States during the requisite period. Pursuant to *Matter of E-M-*, *supra*, when viewed individually or within the totality of the evidence, the applicant has not submitted any probative evidence to establish that her claim is probably true. The applicant's failure to provide any evidence to establish her continuous residence in the United States during the requisite period renders a finding that she has failed to satisfy her burden of proof, as delineated in 8 C.F.R. § 245a.2(d)(5).

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts 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 lack of credible supporting documentation, it is concluded that the applicant has failed to establish by a preponderance of the evidence that she 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.