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**U.S. Citizenship
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[REDACTED]

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FILE: [REDACTED]
MSC 05 167 12428

Office: NEWARK

Date:

APR 24 2008

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, Newark, and that 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 acknowledged that the applicant submitted affidavits from individuals who claimed to have knowledge of the beneficiary's residence in the United States during the requisite period, but noted that the affidavits were insufficient to establish the beneficiary's continuous residence in the United States. The director also noted other facts in the record which the director believed cast doubt on the credibility of the applicant's claim. 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 submits a brief in support of the application, which requests the "favorable exercise of discretion." Counsel for the applicant asserts that the applicant has provided sufficient credible, probative evidence to meet her burden of proof.

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 be 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 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. 8 C.F.R. § 245a.2(d)(5).

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 a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on March 16, 2005. The applicant signed this form under penalty of perjury, certifying that the information she provided is true and correct. She indicated that in October 1981 she entered the United States without inspection via the border near San Diego. 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 indicated that she resided at [REDACTED], Paterson, New Jersey from October 1981 until some time in 1987. She then indicated that at **some point in 1987 her residence became** [REDACTED], Paterson, New Jersey. She lived at the [REDACTED] address until some time in 1992.

The applicant has the burden of proving by a preponderance of the evidence that she has resided in the United States for the requisite period. 8 C.F.R. § 245a.2(d)(5). To meet his/her burden of proof, an applicant must provide evidence of eligibility apart from his/her own testimony. 8 C.F.R. § 245a.2(d)(6). The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that an applicant may submit 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 pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L). In an attempt to establish continuous unlawful residence in this country for the duration of the requisite period, the applicant submitted the following evidence:

1. An affidavit dated December 28, 2004 from [REDACTED] b. Ms. [REDACTED] indicated that she is the applicant's aunt and that she resides at [REDACTED], Paterson, New Jersey. [REDACTED] indicated that she has known the applicant since October 1981 when the applicant came to live with her. She indicated that she supported "all the expenses of my niece" from October 25, 1981 until 1984." While [REDACTED] does not provide her address from the period in question, October 1981 until 1984, her testimony appears to conflict with Form I-687 application where applicant indicated that she resided at [REDACTED] Paterson, New Jersey from October 1981 until some time in 1987. Without knowing [REDACTED]'s specific address from October 1981 until 1984, or whether she moved during that period, it is difficult to reconcile her testimony with the applicant's statement that she lived in the same place from 1981 until 1987. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92. In this case, the applicant did not submit any evidence or explanation of this apparent discrepancy, such as a lease, proof of address, or utility bills or testimony that would explain why the affiant claims that the applicant lived with her from 1981 until 1984 but the applicant does not claim to have moved until 1987. As such, her affidavit has little probative value.
2. An affidavit dated December 28, 2004 from [REDACTED] z. Ms. [REDACTED] indicated that she resides at [REDACTED], Garfield, New Jersey and that she has known the applicant "since she arrived in this country, back in 1981." Although [REDACTED] z confirmed that she met the applicant in the United States in 1981, she did not indicate that she has any direct, personal knowledge of her continuous residence in this country for the duration of the requisite period. She offered no specific information regarding how frequently and under what circumstances she saw the applicant during the relevant period, nor did she provide any relevant details regarding the applicant's residence in the United States beyond their initial meeting. The lack of detail in her statement is significant, and its probative value is limited.
3. An affidavit dated January 13, 2005 from [REDACTED]. Ms. [REDACTED] indicated that she resides at [REDACTED], Paterson, New Jersey. The affiant referred, however, to [REDACTED]" While the record indicates that the applicant claims to be married to a man named [REDACTED]," the applicant does not provide a marriage certificate, or the date and place of their marriage. Thus, an affidavit which confirms [REDACTED]

residence in the United States “during the year 1986” is not probative of the applicant’s entrance to the United States prior to January 1982 or continuous residence in the United States for the duration of the statutory period.

4. An affidavit dated January 15, 2005 from [REDACTED] Ms. [REDACTED] indicates that she resides at [REDACTED], Paterson, New Jersey, and that she has known the applicant “since childhood . . . and that she came to live with me at [REDACTED] Paterson, New Jersey during the year 1987.” She provides her alien registration number but does not indicate her legal status or provide any further evidence of her identity. Her testimony does coincide with the applicant’s assertion in her I-687 application that she moved to the [REDACTED] address at some point in 1987. Although [REDACTED] confirmed that she has known the applicant since 1987, she did not indicate when in 1987 they began living together, or where the applicant lived prior to 1987. She provides no direct, personal knowledge of the applicant’s continuous residence in the United States for the duration of the requisite period. She offered no specific information regarding how frequently and under what circumstances she saw the applicant during the relevant period. The lack of detail in her statement is significant, and its probative value is limited.
5. An affidavit dated December 24, 2004 from [REDACTED] z. Ms. [REDACTED] indicated that she resides at [REDACTED] Pawtucket, Rhode Island, and that she has known the applicant “since we met at a party event in 1987.” She provides her passport number and driver’s license number as evidence of her identity. Although [REDACTED] confirmed that she met the applicant in the United States in 1987, she did not indicate that she has any direct, personal knowledge of her continuous residence in this country for the duration of the requisite period. She offered no specific information regarding how frequently and under what circumstances she saw the applicant during the relevant period, nor did she provide any relevant details regarding the applicant’s residence in the United States beyond her initial meeting with her. The lack of detail in her statement is significant, and its probative value is limited. It is also noted that [REDACTED] z submitted a nearly identical affidavit on behalf of [REDACTED] which is not relevant to this case for the same reasons as stated in item “3” above.
6. A letter signed by [REDACTED] on Cathedral of St. John the Baptist letterhead. In this letter, [REDACTED] states, “[REDACTED] is a parishioner of St. John’s Cathedral parish in Paterson, New Jersey.” This letter does not conform to the statutory requirements for attestations by churches, unions, or other organizations, which is found at 8 C.F.R. § 245a.2 ((d)(3)(v). That regulation requires such attestations to “show the inclusive dates of membership and state the address where the applicant resided during the membership period.” [REDACTED] does not provide dates of the applicant’s membership or any other information that is probative of the issue of her initial entrance to the United States prior to January 1981 or her continuous residence for the duration of the statutory period. Thus, it can be given no probative weight.

In a brief submitted in support of the appeal, counsel asserts that the affidavits are credible and that “respondent is eligible for temporary resident status and merits a favorable exercise of discretion.” No additional evidence was submitted on appeal and no further arguments were set forth in counsel’s brief.

Upon review, counsel's assertions are not persuasive. While an applicant's failure to provide evidence other than affidavits shall not be the sole basis for finding that he or she failed to meet the continuous residency requirements, an application which is lacking in contemporaneous documentation cannot be deemed approvable if considerable periods of claimed continuous residence rely entirely on affidavits which are considerably lacking in certain basic and necessary information. As discussed above, the affiants' statements are significantly lacking in detail and do not establish that the affiants actually had personal knowledge of the events and circumstances of the applicant's residence in the United States. Few of the affiants provided much relevant information beyond acknowledging that they met the applicant in 1981. Overall, the affidavits provided are so deficient in detail that they can be given no significant probative value. Further, this applicant has provided no contemporaneous evidence of residence in the United States relating to requisite period.

As is stated above, 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). The applicant has been given the opportunity to satisfy her burden of proof with a broad range of evidence pursuant to 8 C.F.R. § 245a.2(d)(3).

The absence of sufficiently detailed 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 reliance upon affidavits with minimal probative value, and her own inconsistent statements on her Form I-687, 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.