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**U.S. Citizenship  
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Services**

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FILE:

MSC-05-306-15341

Office: LOS ANGELES

Date: **AUG 29 2008**

IN RE:

Applicant:



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:



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. Wiemann".

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, Los Angeles. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because she found 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 found that the affidavits submitted by the applicant were insufficient to establish her continuous residence in the United States throughout the requisite period. The director also cited an apparent discrepancy between the testimony provided by the applicant at her July 21, 2006 interview and information provided by the applicant on her Form I-687 application. Specifically, the director noted that the applicant testified that she gave birth to a child in Mexico on [REDACTED] but the applicant did not list a corresponding absence from the United States on her Form I-687 application.

On appeal the applicant, through counsel, states that the director violated the CSS/Newman Settlement Agreements by denying the application without first issuing a Notice of Intent to Deny. Counsel also states that the director erred in finding that the applicant did not meet her burden of proof. Finally, counsel disputes the director's finding that the applicant testified that her child was born in Mexico on [REDACTED]. Instead, counsel states that the applicant's child was born in Mexico on [REDACTED] and that this is consistent with information provided by the applicant on her Form I-687 application. The applicant submitted a sworn affidavit on appeal in which she states that her child was born in Mexico in [REDACTED].

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)(1).

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. See 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).

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 applicant 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.

As noted above, the applicant’s attorney stated that the director was required to issue a Notice of Intent to Deny (NOID) pursuant to paragraph 7, page 4 of the CSS Settlement Agreement and paragraph 7, page 7 of the Newman Settlement Agreement. This is incorrect. According to the settlement agreements, the director is required to issue a NOID before denying an application for class membership. Here, the director adjudicated the Form I-687 application on the merits. As a result, the director is found not to have denied the application for class membership. Therefore, the director was not required to issue a NOID prior to issuing the final decision in this case.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that she resided in the United States for the duration of the requisite period. Here, the applicant has not met her burden of proof.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on January 9, 2006. The information contained in the Form I-687 application conflicts with information provided by the applicant in previously submitted Form I-687 applications. Specifically, the record contains a Form I-687 application signed by the applicant on March 13, 1990 and another Form I-687 application signed by the applicant on November 1, 2001.

Part #30 of the Form I-687 application asked applicants to list all residences in the United States since first entry. On the instant Form I-687 application the applicant listed her previous residences as follows:

- [REDACTED] Los Angeles, CA from June 1981 until 1985 and
- [REDACTED] from March 1985 until May 1990.

In addition, the applicant submitted affidavits from [REDACTED] both dated April 18, 2005. It appears that the affiants are husband and wife. According to these affidavits, the applicant resided with [REDACTED] when she first entered the United States. The affiants both stated that they resided at [REDACTED] during the requisite period, which coincides with the information provided by the applicant on the instant Form I-687 application.

However, on the Form I-687 applications submitted by the applicant in 1990 and in 2001, the residences listed by the applicant were entirely different. Specifically, the applicant listed her residences as follows:

- [REDACTED]
- [REDACTED]
- [REDACTED] and

The applicant also submitted an affidavit from [REDACTED] which is dated April 16, 1990. The affiant lists his address as [REDACTED] and states that the applicant resided with him and his wife from October 1981 until June 1984.

In addition, there is a significant discrepancy in the employment information provided by the applicant in the instant Form I-687 application and the previously submitted Form I-687 applications. Specifically, on both of the Form I-687 applications previously submitted by the applicant, she listed employment as a housekeeper for [REDACTED] CA from October 1981 until May 1985. This employment is not listed on the instant I-687 application.

These material inconsistencies seriously detract from the credibility of the applicant's claim.

The applicant also submitted a number of affidavits from individuals who did not reside in the United States during the requisite period. These include the affidavits of [REDACTED]

[REDACTED] These affiants do not claim to have personal knowledge of the applicant's residence in the United States during the requisite period. For the most part, these affiants claim to have heard of the applicant's residence second-hand, through the applicant's parents or others who knew her. As the affiants do not have personal knowledge of the applicant's residence in the United States during the requisite period, these affidavits have minimal probative value.

The applicant also submitted other affidavits which have little probative value. For example, the applicant submitted an affidavit from [REDACTED] which the affiant states that she met the applicant through a cousin. However, the affiant does not indicate when she met the applicant, and thus it is not clear that the affiant had contact with the applicant during the requisite period.

The applicant also submitted an affidavit from [REDACTED] who states that he is the applicant's cousin. The affiant states that he was informed of the applicant's arrival in the United States and that he visited her following her arrival. However, the affiant does not say when the applicant arrived in the United States.

In summary, the applicant has not provided sufficient evidence in support of her claim of residence in the United States relating to the entire 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 contradictory information in the record 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 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.