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U.S. Citizenship  
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Services

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[REDACTED]

FILE: [REDACTED]  
MSC 06-101-15339

Office: LOS ANGELES

Date: **DEC 19 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. 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.

John F. Grissom, Acting 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, Los Angeles. 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 denied the application, finding that inconsistencies between the applicant's testimony at the time of her interview with a United States Citizenship and Immigration Services (USCIS) officer and other evidence in the record cause the applicant to fail to establish 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.

On appeal, counsel for the applicant asserts that the director denied the applicant's claim that she is a class member and, therefore, was required by the CSS/Newman Settlement Agreements to issue a Notice of Intent to Deny (NOID). Counsel further argues that the director failed to accord due weight to evidence submitted by the applicant in support of her application and that the applicant was not afforded the opportunity to access an interpreter during her interview, which caused misunderstandings at the time of that interview.

While counsel correctly asserts that USCIS is required to issue a NOID prior to issuing a final decision based on a finding that an applicant is not a class member, the director adjudicated this case on the merits. Therefore, the director is found not to have denied the application based on finding that the applicant was not a class member. It is noted that in his brief, counsel appears to have confused requirements for establishing adjustment temporary resident status under the Immigration and Nationality Act (Act) § 245A with the requirements for establishing class membership.

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 245(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)(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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

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.

The issue in this proceeding is whether the applicant has established that she (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. The documentation that the applicant submits in support of her claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of affidavits. Some of the evidence submitted indicates that the applicant resided in the United States after May 4, 1988; however, because evidence of residence after May 4, 1988 is not probative of residence during the requisite time period, it shall not be discussed. The AAO has reviewed each document in its entirety to determine the applicant’s eligibility; however, the AAO will not quote each witness statement in this decision.

In 1993, the applicant submitted affidavits from [REDACTED] and [REDACTED]. Each of affiants states that they first

met the applicant in November 1981. However, none of these affiants provides detailed testimony regarding their relationships with the applicant during the requisite period.

While [REDACTED] states that she met the applicant in November 1981, she does not state when or where she met the applicant or whether she first met her in the United States.

In September 2003 the applicant submitted affidavits from [REDACTED] and [REDACTED]. Additionally, in 2004, the applicant submitted second attestations from [REDACTED] and [REDACTED].

Though affiants [REDACTED] and [REDACTED] state in their September 2003 affidavits that they have been acquainted with the applicant in the United States since 1981 and that they know that the applicant has resided in the United States since that time, all affiants fail to state how they first met the applicant, or whether they met her in the United States. These affiants further fail to state the frequency with which they saw the applicant during the requisite period or whether there were periods of time during the requisite period when they did not see the applicant.

In subsequent affidavits,<sup>1</sup> affiants [REDACTED], and [REDACTED] each state that they know that the applicant has resided in the United States since 1981 and that they previously submitted affidavits in support of the applicant in September 2003. However, similarly to their previously submitted affidavits, the affiants provide no further details regarding when or where they first met the applicant or regarding their interactions with the applicant during the requisite period.

Further, it is noted that though affiants [REDACTED], and [REDACTED] assert in their September 2003 affidavits that they met the applicant in 1981, the record indicates that at the time of the applicant's interview with a USCIS immigration officer, she stated that she first met these affiants in July 1982, 1986, 1986, 1982 respectively. 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 petitioner submits competent objective evidence pointing to where the truth lies. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality; an applicant must provide evidence of eligibility apart from his or her own testimony; and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. In this case, none of the witness statements provide concrete information, specific to the applicant and generated by the asserted associations with her, which would reflect and corroborate the extent of those associations and demonstrate that they were a sufficient basis for

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<sup>1</sup> Each of these affidavits was notarized on January 7, 2004.

reliable knowledge about the applicant's residence during the time addressed in the affidavits. To be considered probative and credible, witness affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Upon review, the AAO finds that, individually and together, the witness statements noted above do not indicate that their assertions are probably true. Therefore, they have little probative value.

The record also contains statements from the applicant, the applicant's Form I-687 application, and notes taken from the USCIS immigration officer at the time of the applicant's interview regarding that application.

Though the applicant argues in her statement made on appeal that the inconsistencies regarding when she met affiants from whom she submitted affidavits may have been caused by the lack of an interpreter at her interview, the regulations do not require that the government provide an interpreter to an applicant for adjustment to temporary resident status. Further, regardless of the applicant's testimony at the time of the interview, the attestations submitted in support of her application fail to satisfy her burden of proof for the reasons noted above.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and 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.