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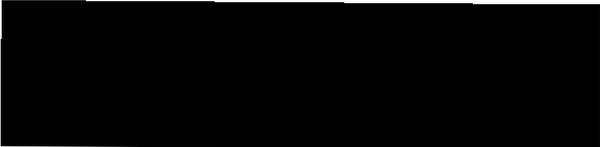
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U.S. Citizenship  
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FILE: [REDACTED]  
MSC-05-130-11828

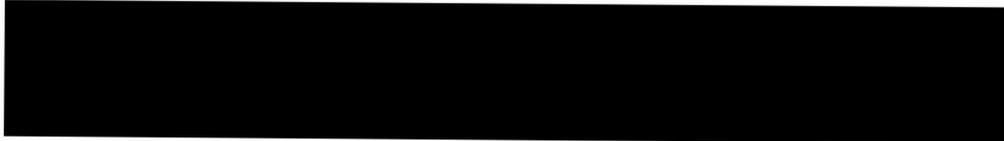
Office: WASHINGTON

Date: FEB 06 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:



**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, Washington. 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 failed to establish by a preponderance of the evidence that she is eligible for temporary resident status. Specifically, the director indicated the applicant stated in an interview with an immigration officer that she was absent from the United States from June to September 1987.

On appeal, counsel for the applicant restated the requirements for temporary resident status and stated that the applicant has met her burden of proof, the applicant never testified that she was absent from June to September 1987, the immigration officer did not review the applicant's Form I-687 application for corrections during the interview, the other documents submitted by the applicant indicate she was not absent from June to September 1987, and the applicant was denied due process of law. The applicant provided an affidavit signed by her and stating that she told the immigration officer that she had traveled to Canada in September 1987 for two weeks, but she never told the officer that she left the United States in June 1987 and returned in September 1987.

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)(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 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 furnished sufficient credible evidence to demonstrate that she resided in the United States for the duration of the requisite period. Here, the submitted evidence is not relevant, probative, and credible.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on February 7, 2005. The record contains a prior Form I-687 application signed by the applicant on November 25, 1990. 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 listed the following addresses during the requisite period:

[REDACTED] Alexandria, Virginia from April 1980 to May 1987; and [REDACTED] Alexandria, Virginia from May 1987 to May 1994. At part #32 where applicants were asked to list all absences from the United States since entry, the applicant listed only the following trip during the requisite period: Visit to Canada for a funeral from June 1987 to September 1987. At part #33 where applicants were asked to list all employment in the United States since entry, the applicant listed the following positions during the requisite period:

Housekeeper for [REDACTED] in Arlington, VA from December 1980 to March 1987; and clerk for [REDACTED] in Washington, DC from June 1987 to 1991.

According to 8 C.F.R. § 245a.2(h)(1)(i), an applicant for temporary resident status shall be regarded as having resided continuously in the United States if, at the time of filing of the application, no single absence from the United States has exceeded 45 days, and the aggregate of all absences has not exceeded 180 days between January 1, 1982 through the date the application for temporary resident status is filed, unless the applicant can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed. The applicant's visit to Canada exceeded 45 days. If the applicant fails to provide an explanation for the delay in her returning to the United States, she will be determined not to have resided continuously in the United States throughout the requisite period.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided voluminous documentation, mostly in the form of copies of tax returns. However, none of the returns relate to the requisite period. The applicant also provided photocopies of envelopes addressed to her. One of the two envelopes contains a postage cancellation date stamp that is illegible. The other envelope contains a date stamp that appears to indicate the letter was sent to the applicant in the United States sometime in 1982. This constitutes some evidence the applicant was present in the United States at some time in 1982.

The applicant also submitted numerous attestations relating to the requisite period. The applicant submitted an affidavit from [REDACTED] dated October 30, 1990. In this affidavit, the affiant stated that the applicant "has been in [her] service as a housekeeper and nanny for six years." This affidavit is inconsistent with the applicant's Form I-687 application, where the applicant indicated she worked for [REDACTED] from December 1980 to March 1987, as opposed to from 1984 to 1990 as indicated in the affidavit. This inconsistency calls into question [REDACTED] ability to confirm that the applicant resided in the United States during the requisite period. In addition, the affidavit does not conform to regulatory standards for letters from employers as stated in 8 C.F.R. § 245a.2(d)(3)(i). Specifically, the declaration does not include the applicant's address at the time of employment, whether or not the information was taken from official company records, where the records are located, and whether the service may have access to the records.

The applicant provided an affidavit from [REDACTED] dated August 24, 2001. In this affidavit, the affiant stated that she has known the applicant since January 1980 in the United States and that the applicant was the affiant's daughter's nanny between June 1983 and September 1986. This affidavit is inconsistent with the information on the applicant's Form I-687 application. Specifically, on the Form I-687 the applicant stated that she worked for [REDACTED] from December 1980 to March 1987, as opposed to from June 1983 to September 1986, as stated in the affidavit. Even if [REDACTED] and [REDACTED] are not the same person, this affidavit is inconsistent with the Form I-687 application because the applicant failed to list any employment with [REDACTED] on the application. In addition, this affidavit

indicates the affiant met the applicant in the United States in January 1980, yet the applicant indicated on her Form I-687 application that her residence in the United States began in April 1980, rather than in January 1980 or prior to that date. These inconsistencies call into question Ms. Jones' ability to confirm that the applicant resided in the United States during the requisite period.

The applicant submitted an affidavit from [REDACTED] dated October 12, 2004. In this affidavit, [REDACTED] stated that she has known the applicant since April 1980 in the United States, and that the applicant was the affiant's housekeeper and her daughter's nanny from December 1980 and March 1987. This affidavit is inconsistent with the affidavit from [REDACTED] dated August 24, 2001, and the affidavit provides no explanation of this inconsistency. This inconsistency calls into question [REDACTED] ability to confirm that the applicant resided in the United States during the requisite period. In addition, [REDACTED] 2001 and 2004 affidavits do not conform to regulatory standards for letters from employers as stated in 8 C.F.R. § 245a.2(d)(3)(i). Specifically, the declaration does not include the applicant's address at the time of employment, whether or not the information was taken from official company records, where the records are located, and whether CIS may have access to the records.

The applicant provided an affidavit from [REDACTED] dated October 30, 1990. The signature of the affidavit lists [REDACTED] two times, as well as [REDACTED] "one time. In this affidavit, the affiant stated that the applicant has lived with the affiant at [REDACTED] Alexandria, Virginia since April 1980. This affidavit is inconsistent with the information on the applicant's Form I-687, where she indicated she moved away from the [REDACTED] address in April 1987, rather than that she continued living there through October 30, 1990 as indicated in the affidavit. This inconsistency calls into question the affiant's ability to confirm that the applicant resided in the United States during the requisite period.

The applicant also provided a lease document listing [REDACTED] as tenant of [REDACTED], Alexandria, starting on April 16, 1986. This information is inconsistent with the information provided by [REDACTED] in her affidavit, where she indicated she was already living at [REDACTED] in April 1980. This inconsistency calls into question [REDACTED]'s ability to confirm the applicant's residence in the United States during the requisite period.

The applicant provided a declaration from [REDACTED] in which the declarant stated that he has known the applicant since September 1981 following her entry into the United States. In addition, [REDACTED] stated that the applicant has been an active member of the Ghanaian Community Association, an attestation that is inconsistent with the applicant's Form I-687 on which she listed no affiliations or associations. This declaration fails to confirm the applicant resided in the United States during the requisite period.

The applicant provided a declaration from [REDACTED], in which the declarant stated that he has known the applicant as a mutual friend in the United States since 1980. This declaration

provides no detail regarding the date and circumstances in which the applicant met the declarant, the locations where the applicant resided, and the affiant's frequency of contact with the applicant during the requisite period. As a result, this declaration lacks sufficient detail to confirm that the applicant resided in the United States during the requisite period.

The applicant submitted a letter from [REDACTED] office manager of Metromedia Paging Services, dated November 7, 1990. In this letter, [REDACTED] stated that the applicant has been employed by Metromedia Paging Services as a part-time clerk/receptionist, since June 1987. This letter does not conform to regulatory standards for letters from employers as stated in 8 C.F.R. § 245a.2(d)(3)(i). Specifically, the declaration does not include the applicant's address at the time of employment, whether or not the information was taken from official company records, where the records are located, and whether CIS may have access to the records.

The applicant provided a form affidavit from [REDACTED], in which the affiant stated that she has personally known and has been acquainted with the applicant in the United States. The affiant stated that, to her personal knowledge, the applicant has resided in the United States in Alexandria, Virginia from April 4, 1980 to present. The affiant stated that she is able to determine the date of the beginning of her acquaintance with the applicant because of having met her several times at social gatherings. This declaration provides no detail regarding the date and circumstances in which the applicant met the declarant, the locations where the applicant resided, and the affiant's frequency of contact with the applicant during the requisite period. As a result, this declaration lacks sufficient detail to confirm that the applicant resided in the United States during the requisite period.

The applicant provided a form affidavit from [REDACTED] dated October 31, 1990, in which the affiant stated that he has personally known and has been acquainted with the applicant in the United States. The affiant listed his address as [REDACTED] Alexandria, Virginia. As stated above, the applicant indicated on her Form I-687 that she resided at [REDACTED] during the requisite period. The affiant stated that, to his personal knowledge, the applicant has resided in the United States in Alexandria, Virginia from April 4, 1980 to present. The affiant stated that he is able to determine the date of the beginning of his acquaintance with the applicant because she is his sister and they keep in close contact. This declaration provided very little detail. For example, the affiant failed to provide the applicant's addresses during the requisite period. At the time of this affidavit, the affiant resided at the same address where the applicant resided from May 1987 to May 1994, as indicated on her Form I-687 application. Considering this factor, as well as the fact that the affiant is the applicant's brother, this affidavit lacks sufficient detail to confirm the applicant's residence during the requisite period.

In denying the application the director noted that the applicant had failed to establish by a preponderance of the evidence that she is eligible for temporary resident status. Specifically, the director indicated the applicant stated in an interview with an immigration officer that she was absent from the United States from June to September 1987.

The director erroneously stated that this absence was not brief, casual, and innocent, as opposed to stating that the absence exceeded 45 consecutive days.

On appeal, counsel claims the applicant never testified that she was absent from June to September 1987, the immigration officer did not review the applicant's Form I-687 application for corrections during the interview, and the other documents submitted by the applicant indicate she was not absent from June to September 1987.

Although she stated she was only absent from September 4 to 20, 1987 on her first Form I-687, the applicant stated that she was absent from June to September 1987 on the instant Form I-687 filed in 2005. This application contains a handwritten notation by the CIS officer circling the dates of the applicant's absence in 1987 and stating, "Verified at adjustment interview." Nonetheless, on appeal, the applicant submits an affidavit signed by her and stating that she told the immigration officer that she had traveled to Canada in September 1987 for two weeks, but she never told the officer that she left the United States in June 1987 and returned in September 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. 582, 591-92 (BIA 1988). The applicant failed to submit independent, credible evidence to establish that she was not absent from the United States for more than 45 consecutive days during the requisite period. As a result, the inconsistency between her statements regarding her absence from the United States has not been resolved. This calls into question whether the applicant resided in the United States continuously throughout the requisite period.

In summary, the applicant has provided contemporaneous evidence that indicates that she was present in the United States at some time in 1982 and contemporaneous evidence that is inconsistent with other documents she provided. She has submitted multiple attestations that are inconsistent with each other or with her Form I-687 application, do not conform to regulatory standards, fail to confirm the applicant resided in the United States during the requisite period, or lack sufficient detail. The 1990 affidavit from [REDACTED] is inconsistent with the applicant's Form I-687 and does not conform to regulatory standards. The 2001 affidavit from [REDACTED] and the affidavit from [REDACTED] are inconsistent with the applicant's Form I-687. The 2004 affidavit from [REDACTED] is inconsistent with Ms. [REDACTED] 2001 affidavit and both affidavits do not conform to regulatory standards. The declaration from [REDACTED] fails to confirm the applicant resided in the United States during the requisite period. The declaration from [REDACTED] the affidavit from [REDACTED] and the affidavit from [REDACTED] lack sufficient detail. The letter from [REDACTED] does not conform to regulatory standards.

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 applicant's contradictory statements on her applications regarding her absences from the United States, and given her reliance upon inconsistent 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.

Although counsel for the applicant stated that the applicant's rights to procedural due process were violated, the applicant has not shown that any violation of the regulations resulted in "substantial prejudice" to her. *See De Zavala v. Ashcroft*, 385 F.3d 879, 883 (5th Cir. 2004) (holding that an applicant "must make an initial showing of substantial prejudice" to prevail on a due process challenge). The applicant has fallen far short of meeting this standard. A review of the record and the adverse decision indicates that the director properly applied the statute and regulations to the applicant's case. The applicant's primary complaint is that the director denied the petition. As previously discussed, the applicant has not met her burden of proof and the denial was the proper result under the statute and regulations. Accordingly, counsel's claim is without merit.

**ORDER:** The appeal is dismissed. This decision constitutes a final notice of ineligibility.