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[REDACTED]

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FILE: [REDACTED]  
MSC-05-062-17151

Office: NEW YORK

Date: FEB 11 2008

IN RE: Applicant: [REDACTED]

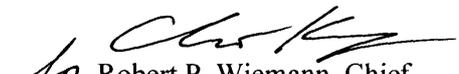
APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the  
Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

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.

  
for 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, New York. 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 the director's decision is contrary to the terms of the law and is an abuse of discretion. She further asserts that the director failed to apply the correct preponderance of the evidence standard.

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. *See* CSS Settlement Agreement paragraph 11 at page 6 and 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 provided sufficient credible evidence to demonstrate that she resided in the United States for the duration of the requisite period. Here, the petitioner 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 December 1, 2004. At part #32 of the Form I-687 application where the applicant was asked to list all absences from the United States since first entry, the applicant indicated that she left the country in August of 1983 and returned from Ecuador in September of 1983; that she left the country in March of 1985 and returned from Ecuador in April of 1985; and that she left the country in August of 1987 and returned from Ecuador in September of 1987. However, it is noted that on her Form I-687 submitted in 1991, at part 32 where the applicant was asked to list all relatives she listed a son, [REDACTED] who was born in Ecuador on August 22, 1982. It is also noted that in response to question #11 of the applicant's Affidavit of Circumstances, which she signed under penalty of perjury on January 30, 1990, she stated that she did not file an application for legalization on or before May 4, 1988, because of her absence from the United States in August 1987. The applicant stated on her Form I-687 application and during her interview with Citizenship and Immigration Services on April 25, 2006, that she entered the United States on January 10, 1981. Contrary to the applicant's declarations, on her Form I-265, Application for Order to Show Cause, at part #4 the applicant indicated that she had been in the United States since October 10, 1989. It is further noted that on the Form I-217, Information for Travel Document or Passport, at part 15 the applicant indicated under penalty of perjury, that she entered the United States on October 5, 1989. Here, because the record contains statements that conflict with what the applicant showed on her Form I-687 application and testified to under oath, doubt is cast on the assertions made. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. *Id.* Any attempt to explain or reconcile such

inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Id.* at 591-92.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted the following attestations:

- A notarized affidavit from [REDACTED] dated November 18, 1989, in which he stated under penalty of perjury that he has known the applicant since June of 1982 and that during that time they have seen each other on numerous occasions. A sworn declaration from [REDACTED] dated May 13, 2006, in which he stated under penalty of perjury that the applicant and her husband lived in his apartment at [REDACTED] New York, New York, from January of 1981 to July of 1983. Here, there is a direct contradiction in the statements made by the affiant. This contradiction calls into question the affiant's ability to confirm that the applicant resided in the United States during the requisite period. There has been no explanation provided for this contradiction. The affiant's statements conflict with one another and with information the applicant provided in her Form I-687 application, hence, the statements are neither probative nor credible.
- A letter dated November 4, 1989, from [REDACTED] of Our Lady of Lourdes, in which he stated that the applicant has been a member of the church since January of 1981, that she attends Mass fairly regularly, and that his information is based upon his personal observation. He further stated that during the applicant's membership she resided at [REDACTED] New York, New York, and [REDACTED], New York, New York. This statement is inconsistent with the applicant's Form I-687 application, at part #31 where she was asked to list all affiliations and associations with churches, organizations, or clubs, in that she did not list any. This inconsistency calls into question the affiant's ability to confirm that the applicant resided in the United States during the requisite period. Because this declaration conflicts with what the applicant showed on her Form I-687 application, doubt is cast on assertions made by the declarant. The declarant's statement conflicts with other evidence in the record, hence, very minimal weight can be afforded to this declaration in establishing that the applicant resided in the United States during the requisite period.
- A notarized affidavit dated November 18, 1989, from [REDACTED] in which she stated that she has known the applicant since October of 1984, and that since that date they have seen each other on numerous occasions. The statement is not accompanied by any identification or evidence that the affiant resided in the United States during the requisite period, and it lacks any details of her relationship with the applicant. Moreover, it refers only to a time period since October of 1984, with no mention of the applicant's entry into or residence in the United States before January 1, 1982. Given its lack of detail and relevance, the statement can be afforded very minimal weight in establishing that the applicant resided in the United States since October of 1984.

- A notarized affidavit dated November 18, 1989, from [REDACTED] in which she stated that she has known the applicant since August of 1981 and that since that date they have seen each other on numerous occasions. The affiant has not provided evidence that she herself was present in the United States during the requisite period. Though not required to do so, she has not included proof of her identity with this affidavit. Although the affiant attested to the applicant's residence in this country since August of 1981, she failed to provide any relevant and verifiable testimony, such as the applicant's address of residence in this country during that period, to corroborate the applicant's claim of residence in the United States from prior to January 1, 1982. Because this affidavit is lacking in detail, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

In denying the Form I-687 application, the director indicated that there were discrepancies found in the applicant's statements, testimony, and immigration applications; including her Form I-217, Information for Travel Document or Passport, sufficient to deny the application. The director also determined that the affidavits submitted by the applicant were not corroborated by other evidence in the record and were not credible.

On appeal, the applicant reasserts her claim and does not submit any additional evidence.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the requisite period. Because the statements and evidence are inconsistent, and no independent objective evidence has been presented to explain the inconsistencies, doubt is cast on the assertions made as they relate to the applicant's residence in 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 was filed. *See Id.* at 591-92. The attestations from [REDACTED] and [REDACTED] conflict with other evidence in the record and are lacking in detail.

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 contradictory statements on her applications and her 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.