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U.S. Department of Homeland Security
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U.S. Citizenship
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Services

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[Redacted]

FILE: [Redacted] Office: NEW YORK Date: JAN 09 2008
MSC-06-076-10819

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.

A handwritten signature in black ink, appearing to read "R. Wienmann".

Robert P. Wienmann, 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 to Citizenship and Immigration Services (CIS or the Service). 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. Specifically, the director noted that the attestations the applicant submitted in support of her application did not demonstrate proof that the affiants had direct personal knowledge of the events and circumstances of her residency. She went on to say that credible attestations include documents identifying the affiants, proof that the affiants were in the United States during the requisite period, proof that there was a relationship between the applicant and the affiant and a current phone number at which the affiants may be contacted to verify information in the attestations. The director found the attestations submitted by this applicant lacking. Therefore, 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 she is unable to provide contemporaneous documents as proof of her residency during the requisite period because of the passage of time, because she had an unlawful status in the United States during the requisite period and because the applicant's husband, and not the applicant, worked to support the family during the requisite period. She submits an attestation from her husband and an additional two (2) attestations in support of her application.

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 to the Immigration and Naturalization Service (the Service, now Citizenship and Immigration Services or CIS) 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 (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 a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on December 15, 2005. 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 showed her address in the United States during the requisite period to be [REDACTED] in Monterey, California where she lived from December 1981 until August 1989. At part #33, where the applicant was asked to list all of her employment in the United States since he first entered, she showed she was a housewife for the duration of the requisite period.

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 her burden of proof, an applicant must provide evidence of eligibility apart from 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 since prior to January 1, 1982, the applicant provided the following:

- A letter from [REDACTED] dated February 18, 2006. In this letter, [REDACTED] asserts that she met the applicant and her husband and son in Los Angeles, California in December 1981. Though [REDACTED] states that she lived in Van Nuys, California and the applicant resided in Monterey, California during the requisite period, she states that she kept in touch with the applicant by telephone. She goes on to say that she saw the applicant during holidays during the requisite period. Though [REDACTED] states that she resided continuously in the United States during the requisite period, she failed to submit proof that she did so. Further, though she states that she spoke with the applicant by telephone during the requisite period, she did not state the frequency with which she spoke with the applicant during the requisite period, or establish whether there were periods of time during which she did not maintain contact with the applicant during that time. Because this letter is significantly lacking in detail regarding the events and circumstances of the applicant's residence during the requisite period, it carries very minimal weight in establishing that the applicant continuously resided in the United States for the duration of that time.

Though it is noted that the applicant has also submitted an affidavit from [REDACTED] this affidavit asserts that [REDACTED] has known the applicant since December 2000. It is also noted that the applicant submitted a California Identification Card issued to the applicant in 1989, a tax records relevant to 2002, 2003, and 2004. The issue in this proceeding is the applicant's residence in the United States during the requisite time period. Because these documents verify the applicant's presence in the United States subsequent to the requisite time period, they are not relevant evidence for this proceeding.

In denying the application, the director noted the above and stated that the attestations submitted by the applicant were insufficient to meet her burden of establishing that she resided in the United States for the duration of the requisite period. In saying this, the director stated that the attestations submitted by the applicant did not contain proof that the affiants who submitted them had resided in the United States during the requisite period and further did not submit proof that there was a relationship between themselves and the applicant.

On appeal, the applicant's attorney states that the applicant lived in California for over nineteen years. She goes on to say that because the applicant resided in the United States in an illegal status during the requisite period, she is unable to produce contemporaneous evidence in support of her application. She further states that the applicant did not work, as she was supported by her husband during the requisite period. In addition to this statement, the applicant submitted the following in support of her application:

- A letter from the applicant's husband, [REDACTED] Insfran dated July 1, 2006. In this letter [REDACTED] asserts that the applicant lived with him and that both he and she entered the United States in December 1981. He goes on to say that all of the bills were in his name and asserts that during their move to New York from California in 2000 much of the evidence that would have been useful was discarded. Though [REDACTED] asserts that he and the applicant entered the United States in 1981, he does not provide details regarding how they entered, or offer any proof that they did so at that time. Further, though he asserts that he himself resided continuously with the applicant for the duration of the requisite period, he does not submit any proof that he did so. Because this letter is significantly lacking in detail, it can be afforded

very little weight in establishing that the applicant resided continuously in the United States for the duration of the requisite period.

A letter from [REDACTED] that was notarized on June 17, 2006. In this letter, [REDACTED] states that he first met the applicant in Paraguay. He asserts that the applicant resided in California from 1981 until the end of the requisite period. He goes on to say that though he lived in New York and the applicant lived in California, he remained in contact with the applicant's family by telephone during the requisite period. Though [REDACTED] states that he resided in the United States for the duration of the requisite period, he failed to submit proof that he did so or to submit documents as proof of his identity. Because this letter is significantly lacking in detail and because it is not clear that [REDACTED] was personally aware of the events and circumstances of the applicant's residency, this letter carries very little weight in establishing that the applicant resided continuously in the United States for the duration of the requisite period.

- A letter from [REDACTED] dated June 28, 2006 in which [REDACTED] states that she met the applicant's husband in Paraguay. She goes on to say that the applicant resided with her for three months in 1986 in Monterey, California. It is noted that the address at which [REDACTED] states the applicant and her family lived with her, [REDACTED] in Monterey, California, is not an address at which the applicant indicated she resided at on her Form I-687. Here, Ms. [REDACTED] failed to submit proof that she herself resided in the United States during the requisite period or to submit proof of her identity with her letter. Because [REDACTED] does not state that she knew that the applicant resided in the United States before 1986, this letter is relevant to only part of the requisite period. Because of this, and because [REDACTED] states that the applicant lived at an address that is not consistent with addresses that the applicant showed she resided at during the requisite period on her Form I-687, very little weight can be afforded to this letter as proof that the applicant resided in the United States during the requisite period.
- An envelope sent to the applicant's husband that shows it was sent to him in Monterey, California in December 1981 from Paraguay. Though this envelope shows that an individual sent the applicant's husband a letter in the United States December 1981, it does not establish that the applicant was with her husband at the time he was sent the letter that was in the envelope. Therefore, because this envelope does not pertain to the applicant, it carries no weight in establishing that she resided continuously in the United States for the duration of the requisite period. The applicant submitted a letter that is written in Spanish with this envelope. However, because she failed to submit a certified translation of this letter, the AAO cannot determine whether the evidence supports the petitioner's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the requisite period, and has submitted attestations from only four people that are relevant to that period. None of the individuals who submitted attestations provided proof that they themselves resided in the United States during the requisite period. Two of the individuals from whom the applicant submitted attestations affiants did not live near or regularly see the applicant during the requisite period. One individual from whom the applicant submitted attestation, [REDACTED], did not know the applicant for the duration of the requisite period and provided an address of residence for the applicant that was not consistent with what the applicant showed on her Form I-687. Though the applicant submitted a letter from her husband attesting to her having resided in the United States during

the requisite period, her husband did not offer proof that he himself resided in the United States for the duration of that time.

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 applicant submitted letters from four individuals that are relevant to the relevant period and one envelope addressed to her husband as corroborating evidence of her continuous residence during the requisite period to satisfy her burden of proof. However, for the reasons noted above these documents are not sufficient to meet the applicant’s burden of proof.

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 reliance upon attestations from individuals who did not establish that the events and circumstances of the applicant’s residence in the United States during the requisite period was personally known to them, 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.