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**U.S. Citizenship
and Immigration
Services**

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[Redacted]

FILE: [Redacted] MSC-05-259-12780

Office: NEW YORK, NY

Date: **JAN 10 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.

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, 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. In saying this, the director noted that affidavits submitted by the applicant did not include documents identifying affiants, proof that the affiants were in the United States during the requisite period and a working daytime telephone number at which the affiants could be reached to verify information in their affidavits. The director found that these affidavits, when considered together with the other evidence the applicant submitted in support of her application, were not sufficient to establish that the applicant continuously resided in the United States for the duration of the requisite period by a preponderance of the evidence. The director denied the application as 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 did not give due weight to the evidence she submitted 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).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), “until the date of filing” shall mean 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 periods, 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 (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 from prior to January 1, 1982 through the date she attempted to file a Form I-687 application with the Service in the original legalization application period of May 5, 1987 to May 4, 1988. 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 June 16, 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 the Bronx, New York where she lived from November 1981 until January 1990. At part #33, where the applicant was asked to list all of her employment in the United States since she first entered, she showed her employment in the United States during the requisite period to be: for [REDACTED] as a babysitter in the Bronx from February 1982 until March 1985; and for Washington Inventory Service in Staten Island as a clerk from August 1985 until September 1998.

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:

Receipts:

- A photocopy of a money order receipt bearing the number [REDACTED]. The date cannot be seen on this money order. It indicates that the payee was [REDACTED] and it shows the applicant's name

but the address is not legible. Because the date cannot be seen on this document, it does not carry any weight in establishing that the applicant resided in the United States for the duration of the requisite period.

- A photocopy of a money order receipt bearing the number [REDACTED]. This document is dated July 5, 1986. It indicates that the payee was [REDACTED] and it shows the applicant's name.
- A photocopy of a receipt from [REDACTED]'s Stationers that indicates that the applicant bought an item from that store on April 10, 1984.
- A photocopy of a receipt from Hi Line Video showing that the applicant bought an item from this store in what appears to be 1985.
- A photocopy of a receipt from [REDACTED] in New York that shows that the applicant took her dry cleaning to this establishment in December 1, 1983.
- A photocopy of a receipt from B & J Fabrics, Inc in New York that shows that the applicant bought items at this store on January 12, 1987.
- A photocopy of a receipt dated October 31, 1987, from Hardy Shoes that does not show where this store is located or who bought the items. Because this receipt does not indicate any relation to the applicant, it carries no weight in establishing that the applicant resided in the United States during the requisite period.
- Two photocopies of receipts from Pathmark of Copiague, one dated April 8, 1988 and the other dated April 9, 1990. It is not clear where this store is or who purchased these items. Because these receipts are not associated with the applicant, they carry no weight in establishing that the applicant resided in the United States during the requisite period.

Envelopes:

- A photocopy of an envelope addressed to the applicant with a postmark date of April 25, 1985. The sender is shown as ChemicalBank.
- A photocopy of an envelope addressed to the applicant with a postmark date of August 14, 1986 from Citibank.

Affidavits and statements:

- A letter from [REDACTED], who indicates he is the pastor of the Willis Avenue United Methodist Church. This letter is dated January 2, 1990 and states that the applicant has been a member of this church since January 1982. He goes on to say that the applicant, whom he refers to as, "[REDACTED]" is active and is responsible for the church's Sunday school department. The regulation at 8 C.F.R. § 245a.2(d)(3)(v) states in pertinent part that attestations by churches can be considered credible proof of residence if such documents: identify the applicant by name; are signed by an official whose title is shown; show inclusive dates of membership; state the address where the applicant resided during his or her membership period; include the seal of the organization impressed

on the letter or the letterhead of the organization, if the organization has letterhead stationary; establish how the author knows the applicant; and establish the origin of the information being attested to. Here, though the applicant is referred to in this letter, she is incorrectly referred to as [REDACTED]

[REDACTED] This letter does not show the applicant's inclusive dates of membership or provide an address at which she resided during her membership period. Because this letter is lacking in these respects, little weight can be afforded to it as evidence that the applicant resided continuously in the United States for the duration of the requisite period.

- An affidavit from [REDACTED] dated August 2, 1989. Here, the affiant, who resides in Canada, states that the applicant visited him in May 1987. Though this document verifies an absence that the applicant indicated she had from the United States during the requisite period, it carries no weight in establishing that that applicant resided continuously in the United States for the duration of the requisite period.
- An undated affidavit from [REDACTED] who states that he met the applicant at her house on November 19, 1981 through a friend of his. He states that the applicant is both his friend and his tenant. Here, the affiant indicates that the applicant is his tenant, but he fails to provide an address of residence at which the applicant resided as his tenant. Though not required to do so, he does not provide proof of his identity with this affidavit. He fails to provide proof that he himself was in the United States during the requisite period. He does not indicate the frequency with which he saw the applicant during the requisite period or state whether there were periods of time during which he did not see the applicant during that time. Because this affidavit is significantly lacking in detail, it carries little weight in establishing that the applicant resided continuously in the United States for the duration of the requisite period.
- An affidavit from [REDACTED] that is dated March 8, 2006. Here, the affiant does not indicate where the applicant resided at any time, when he met the applicant or the nature of his relationship with her. Though not required to do so, the affiant submits a copy of his naturalization certificate as proof of his identity. However, the affiant fails to provide proof that he himself was in the United States during the requisite period. He does not indicate the frequency with which he saw the applicant during the requisite period or state whether there were periods of time during which he did not see the applicant during that time. Because this affidavit is significantly lacking in detail, it carries little weight in establishing that the applicant resided continuously in the United States for the duration of the requisite period.

Thus, on the application, which the applicant signed under penalty of perjury, she showed that she resided in the United States since November of 1981. Though the applicant submitted the evidence as noted above in support of her application, it was not found sufficient to establish that she resided continuously in the United States for the duration of the requisite period.

In denying the application the director noted the above, and the fact that the affidavits submitted by the applicant lacked contact information for the affiants and were therefore not amenable to verification.

On appeal the applicant asserts that due weight was not given to the evidence she submitted in support of her application. She did not submit additional evidence in support of her application.

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. at 79-80. 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 receipts, two (2) envelopes and four (4) statements and affidavits as corroborating evidence of her continuous residence during the requisite period to satisfy her burden of proof. However, as was noted above, these documents do not carry sufficient weight to allow the applicant to establish, by a preponderance of the evidence that she resided continuously in the United States for the duration of the requisite period.

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 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 from prior to January 1, 1982 through the date she attempted to file a Form I-687 application 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.