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[Redacted]

FILE: [Redacted]
MSC-06-082-14081

Office: LOS ANGELES

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:

SELF-REPRESENTED

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. Wiemann".

Robert N. 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, Los Angeles, and that decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined the applicant had not demonstrated that she had continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that she attempted to file a Form I-687, Application for Status as a Temporary Resident, with the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS) in the original legalization application period of May 5, 1987 to May 4, 1988. Specifically, the director stated that though the applicant submitted affidavits in support of her claim of having maintained continuous residence in the United States for the duration of the requisite period, these affidavits were not submitted with corroborating documentation. The director further noted that at the time of her interview on April 7, 2006, the applicant was unable to provide testimony regarding details of the events and places referenced in the affidavits she submitted. Therefore, the director determined that the applicant did not meet her burden of establishing, by a preponderance of the evidence, that she was eligible to adjust to Temporary Resident Status pursuant to the terms of the CSS/Newman Settlement Agreements and denied the application.

On appeal, the applicant asserts that at the time of her interview, the CIS officer failed to ask adequate questions. She submits a brief 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).

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.* 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 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 December 21, 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 for the duration of the requisite period to be [REDACTED] Los Angeles, California from February 1981 until May 1993. At part #31 where the applicant was asked to show all affiliations with associations, clubs, organizations, churches, unions and businesses, she did not indicate that she had any such affiliations. At part #33, where the applicant was asked to show her employment, she showed that during the requisite period, she was a "household member" from February of 1981 until 1990. It is noted that the applicant was less than eighteen (18) years of age 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 documentation in the form of nine (9) declarations that relate to the required period of 1981-1988. It is noted that none of these declarations are notarized. Details of these documents are as follows:

- A declaration from [REDACTED], the applicant's mother, which is dated December 2, 2005. In this declaration, the declarant states that she attempted to file for legalization during the initial filing period, but was front-desked. Here, [REDACTED] does not state when the applicant entered the United States, nor does she state whether the applicant continuously resided in the United States for the duration of the requisite period. Here, [REDACTED] does not submit her declaration with proof that she, herself resided continuously in the United States for the duration of the requisite period. Because [REDACTED] does not address whether the applicant continuously resided in the United States for the duration of the requisite period in this declaration, it carries no weight in establishing that she did so.
- A declaration from [REDACTED] dated November 23, 2005. In this declaration, [REDACTED] asserts that she first met the applicant and her mother in the United States in 1981. [REDACTED] states that she maintained contact with the applicant, "throughout the years." However, she fails to indicate the frequency with which she had contact with the applicant or to state whether there were periods of time during the requisite period during which she did not see the applicant. [REDACTED] goes on to provide her address in Los Angeles during the requisite period and to submit her California Identification Card issued to her in 1984 as proof of her identity. However, though [REDACTED] indicates that she met the applicant in 1981, she fails to submit proof that she herself resided in the United States at that time. As this declaration was not submitted with a telephone number at which the declarant could be reached, it is not amenable to verification. Because this declaration is significantly lacking in detail, and because it is not amenable to verification it carries minimal weight in establishing that the applicant continuously resided in the United States during the requisite period.
- A declaration from [REDACTED] dated November 18, 2005. In this declaration, [REDACTED] states that she met the applicant in April 1981. She indicates that she met the applicant through a friend in church. It is noted here that the applicant did not indicate that she was affiliated with any churches on her Form I-687. [REDACTED] states that she maintained contact with the applicant because she often saw her at church. Though not required to do so, [REDACTED] submits a copy of her certificate of naturalization issued to her on May 22, 1998 and a photocopy of her current driver's license as proof of her identity. Here, though the declarant states that she saw the applicant often, she does not indicate the frequency with which she saw the applicant during the requisite period or indicate whether there were periods of time during that time when she did not see the applicant. The declarant further fails to submit proof that she herself resided in the United States during the requisite period. As this declaration was not submitted with a telephone number at which the declarant could be reached, it is not amenable to verification. Because this declaration is significantly lacking in detail, and because it is not amenable to verification it carries minimal weight in establishing that the applicant continuously resided in the United States during the requisite period.
- A declaration from [REDACTED] dated November 17, 2005. Here, though [REDACTED] indicates that she met the applicant at a birthday party in 1981, she does not indicate whether this birthday party occurred in the United States. In her declaration, [REDACTED] indicates that she lived in the United States for the duration of the requisite period. However, she does not submit proof that she did so. Though [REDACTED] states that she maintained contact with the applicant throughout the years, she fails to indicate the frequency with which she saw the applicant during the requisite period or indicate whether there

were periods of time during that time when she did not see the applicant. As this declaration was not submitted with a telephone number at which the declarant could be reached, it is not amenable to verification. Because this declaration is significantly lacking in detail, and because it is not amenable to verification it carries minimal weight in establishing that the applicant continuously resided in the United States during the requisite period.

- A declaration from [REDACTED] dated November 28, 2005. Here, [REDACTED] asserts that he met the applicant and her mother in April 1981 in the supermarket. In this declaration, [REDACTED] indicates that he lived in the United States for the duration of the requisite period. Though [REDACTED] did submit proof he worked in the United States during the requisite period, this proof establishes that he did so from June of 1985. Though [REDACTED] states that he maintained contact with the applicant because they visited each other often, he fails to indicate the frequency with which he saw the applicant during the requisite period or indicate whether there were periods of time when he did not see the applicant during that time. As this declaration was not submitted with a telephone number at which the declarant could be reached, it is not amenable to verification. Because this declaration is significantly lacking in detail, and because it is not amenable to verification it carries minimal weight in establishing that the applicant resided continuously in the United States for the duration of the requisite period.
- A declaration from [REDACTED] dated November 23, 2005. In this declaration, [REDACTED] states that he met the applicant in May 1981. He states that during the requisite period he often saw the applicant while at the Laundromat. Though not required to do so, the declarant submits his California Identification Card issued to him in November 1986 and his Permanent Resident Card, issued to him on November 1989 as proof of his identity. Though [REDACTED] states that he maintained contact with the applicant because they visited each other often, he fails to indicate the frequency with which he saw the applicant during the requisite period or indicate whether there were periods of time when he did not see the applicant during that time. As this declaration was not submitted with a telephone number at which the declarant could be reached, it is not amenable to verification. Because this declaration is significantly lacking in detail, and because it is not amenable to verification it carries minimal weight in establishing that the applicant resided continuously in the United States for the duration of the requisite period.
- A declaration from [REDACTED] dated November 15, 2005. Though not required to do so, the declarant submits his California Driver's License from 1981 and a card from a law office that shows that the applicant resided in the United States since 1981 with his declaration. In this declaration, [REDACTED] states that he first met the applicant in 1981. He further states that his family has always been friends with the applicant's family. He does not indicate where he first met the applicant or how or where his family first met the applicant's family. Though the declarant states that he visits the applicant frequently and calls her once in a while, he fails to indicate the frequency with which he saw the applicant during the requisite period. He further fails to indicate whether there were periods of time when he did not see the applicant during that time. As this declaration was not submitted with a telephone number at which the declarant could be reached, it is not amenable to verification. Because this declaration is significantly lacking in detail, and because it is not amenable to verification it carries minimal weight in establishing that the applicant resided continuously in the United States for the duration of the requisite period.

- A declaration from [REDACTED] dated November 20, 2005. Though she was not required to do so, the declarant submitted a copy of her Permanent Resident Card, which indicates she obtained this status in December of 1990 as proof of her identity. In her declaration, [REDACTED] states that she met the applicant in 1981 at a plant nursery. She states that she herself lived continuously in the United States for the duration of the requisite period. However, she fails to submit proof that she did so with her declaration. Though the declarant states that she maintained contact with the applicant since she first met her, she fails to indicate the frequency with which he saw the applicant during the requisite period or indicate whether there were periods of time when she did not see the applicant during that time. As this declaration was not submitted with a telephone number at which the declarant could be reached, it is not amenable to verification. Because this declaration is significantly lacking in detail, and because it is not amenable to verification it carries minimal weight in establishing that the applicant resided continuously in the United States for the duration of the requisite period.
- A declaration of [REDACTED] dated November 26, of a year that is not stated. Though not required to do so, the declarant submitted a copy of his Temporary Resident Card that he asserts was issued in 1988 and his current Permanent Resident Card. It is noted that the copy of this declarant's Temporary Resident Card is of poor quality and is therefore not legible. Here, the declarant asserts that he met the applicant in English classes in 1981. However, he does not submit proof that he or the applicant attended these classes or say where they took place. The declarant states that he maintained contact with the applicant because they visited and called each other once in a while. However, the declarant fails to indicate the frequency with which he saw the applicant during the requisite period or indicate whether there were periods of time when he did not see the applicant during that time. As this declaration was not submitted with a telephone number at which the declarant could be reached, it is not amenable to verification. Because this declaration is significantly lacking in detail, and because it is not amenable to verification it carries minimal weight in establishing that the applicant resided continuously in the United States for the duration of the requisite period.
- A declaration from [REDACTED] dated November 21, 2005. Though not required to do so, [REDACTED] submitted a photocopy of his Temporary Resident Card, issued in May of 1988 and his Lawful Permanent Resident Card, issued in December 1989, as proof of his identity. In his declaration, [REDACTED] asserts that he met the applicant in June 1981 when they met while riding the bus together. He states that he kept in contact with the applicant since that time through frequent phone calls. However, the declarant fails to indicate the frequency with which he spoke with or saw the applicant during the requisite period or indicate whether there were periods of time when he did not see or speak with the applicant during that time. As this declaration was not submitted with a telephone number at which the declarant could be reached, it is not amenable to verification. Because this declaration is significantly lacking in detail, and because it is not amenable to verification it carries minimal 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 February 1981. The evidence submitted with the application that is relevant to the 1981-88 period in question are nine (9) declaration, none of which are notarized and none of which contain telephone numbers at which the declarants can be contacted to verify information in their respective declarations.

In denying the application the director noted the above, and the fact that at the time of the applicant's interview with a Citizenship and Immigration Services (CIS) officer on April 7, 2006, the applicant could not provide details regarding events and places referenced in the declarations she submitted in support of her application

On appeal, the applicant resubmits previously submitted declarations and submits a statement in support of her appeal. She states that she entered the United States for the first time in 1981 when she was eight (8) years old. She states that she did not attend school when she entered because her parents, who have a low level of education themselves, believed that the applicant might be deported if she did so. She reiterates the dates of her absences. She goes on to assert that the CIS officer who interviewed her did not take into account the fact that the events and circumstances she was interviewed about took place twenty-five (25) years ago. She states that she hopes that CIS will reconsider her application. The applicant did not submit any new evidence in support of her application.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period, and has submitted attestations from individuals concerning that period that are significantly lacking in detail and do not contain phone numbers at which the declarants can be reached to verify information in their attestations. She did not submit any additional evidence to establish that she had maintained continuous residence in the United States with her appeal.

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 nine (9) declarations 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 do not carry sufficient weight to meet this applicant's burden of proof.

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 that are lacking in detail and are not amenable to verification, 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.