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FILE:

MSC 05 302 12283

Office: NEW YORK

Date: JAN 28 2008

IN RE:

Applicant:

APPLICATION:

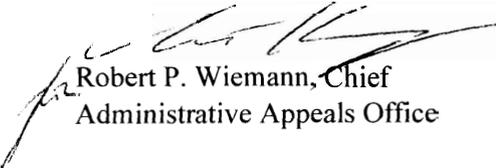
Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

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.


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, and that 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, on July 29, 2005. The director determined the applicant had not demonstrated that she had continuously resided in the United States in an unlawful status for the duration of the requisite period. The director determined that although the evidence submitted established the applicant's presence in the United States at various times between 1981 and 1988, the evidence was insufficient to establish the applicant's continuous residence in an unlawful status for the entirety of the requisite period. The director also noted that Citizenship and Immigration Services (CIS) records reveal that the applicant departed the United States in July 1983, a departure that was not acknowledged by the applicant, thus casting doubt on the credibility of her testimony. Therefore, the director determined that the applicant was not eligible to adjust to Temporary Resident Status pursuant to the terms of the CSS/Newman Settlement Agreements and she denied the application.

On appeal, the applicant provides further evidence to establish that individuals who provided affidavits on her behalf were in the United States during the requisite period. She states that she did not return to Brazil in July 1983, as stated in the director's decision, and indicates that she is enclosing dated photographs taken in the United States in August 1983 in support of this claim. The applicant asserts that the affidavits she submitted provide strong proof that she was in the United States for the entire statutory period.

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 be 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 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 a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on July 29, 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 the following addresses for the 1981 to 1988 period: (1) [REDACTED], Marathon, New York, from August 1981 to November 1982; (2) [REDACTED], Brooklyn, New York, from November 1982 to February 1984; (3) [REDACTED], Wallkill, New York, from March 1984 to February 1985; (4) [REDACTED], San Diego, California from February 1985 to March 1988; and (5) [REDACTED], Oceanside, California, from April 1988 to January 1992. Part # 33 of this application requests the applicant to list her employment in the United States since her entry. The applicant stated that she was employed at [REDACTED] in Carlsbad, California from May 1985 to December 1987, and by "[REDACTED]" in Vista, California from January 1988 to December 1991.

At part #31 of her Form I-687, where asked to list all affiliations and associations with churches and other organizations in the United States, the applicant stated that she was affiliated with the Jehovah's Witnesses in San Diego, California from 1985 to 1993, and in Jackson Heights, New York from 1994 to the present. The applicant indicated at part #32 of the application that her only absence from the United States during the requisite period was a trip to Brazil due to a family emergency, from May 1983 to June 1983.

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 her continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided the following evidence:

- Two notarized letters from [REDACTED], both dated June 7, 2005. In one letter, [REDACTED] stated that he came to know the applicant through family members, that the applicant came to stay with he and his wife "for a while" in the summer of 1981, and that he resided in Marathon, New York at that time. He stated that the applicant became attached to his family, remained in the United States, and currently lives close by and maintains close contact with him. In the second letter, [REDACTED] stated that after the applicant came in 1981 and decided to stay in the United States, he and his wife tutored her for about three years. Although not required to do so, [REDACTED] provided a copy of his New York driver license and a copy of the biographical page of his U.S. passport as proof of his identity. [REDACTED] indicated on the letters that he resides at [REDACTED] in Brooklyn, New York.

While [REDACTED] claims to have resided with the applicant for three years during the requisite period, his statements are lacking in significant details that would corroborate the information the applicant listed on her Form I-687, or that would lend credibility to the claim that he has been in close contact with the applicant for 25 years. He does not provide the address or addresses at which he resided with the applicant, other than noting that he resided in Marathon, New York in 1981. The applicant indicated on her Form I-687 that she resided in [REDACTED], New York during her first three years in the United States. It is further noted that the applicant indicated that she resided at [REDACTED], Brooklyn, New York from November 1982 to February 1984, and that this was [REDACTED] address as of 2005. While it is possible that she relocated with him from Marathon to Brooklyn, there is no corroborating evidence that [REDACTED] has lived at this address since 1982, nor is there any evidence that [REDACTED] ever lived in Walkill, New York. In addition, the record contains a copy of a U.S. Reentry Permit issued to [REDACTED] in September 1988, which indicates that his U.S. address was [REDACTED] at that time.

Notably, [REDACTED] did not provide any information regarding how or under what circumstances he met the applicant, how he knew her "through family members," or how he came to agree to take her into his

home when she was 13 years old. He did not indicate that he had any direct, personal knowledge of the applicant or of the events and circumstances of her residence beyond the three years during which he claims she resided with him and received tutoring from him, nor did he indicate whether there were periods of time during the requisite period when he did not have contact with her. This is significant, since the applicant indicated that she resided in California from 1985 until December 1993, before returning to New York. Other than [REDACTED]'s vague statement, there is no proof of his relationship with the applicant. Although the applicant has submitted photographs, none of them appear to depict her with [REDACTED] who, based on her claims, was essentially her guardian from the time she arrived in the United States as an adolescent. Because of their significant lack of detail, the declarations from [REDACTED] have limited probative value.

- A notarized letter dated May 30, 2005, signed by [REDACTED] and [REDACTED], residents of Vista, California. [REDACTED] states that he and his wife have known the applicant since 1987, when they moved to Vista, and that they met her while doing religious community services. [REDACTED] provided copies of their California driver licenses as proof of their identity. While the Darghams corroborate the applicant's claim that she was in California in 1987, they do not provide any verifiable information, such as the applicant's address of residence during the time they knew her. They also do not indicate how frequently they saw the applicant during the requisite period. The probative value of this affidavit is limited due to the lack of detail.
- A notarized letter from [REDACTED], who states that she is currently residing in Spain. She states that she met the applicant in 1985, and that she was living in Southern California at that time, involved in a door-to-door ministry to assist interested people to obtain an education in the Bible. She indicates that she met the applicant while engaged in this work, that the applicant was interested in obtaining such an education, and that they spent considerable time together and became good friends. [REDACTED] provided a copy of her California driver license as proof of her identity. The same deficiencies discussed above also apply to this affidavit, as [REDACTED] did not provide verifiable information such as the address at which the applicant was residing in 1985, state how frequently she saw her during the requisite period, or provide any details that would suggest that she had direct, personal knowledge of the events and circumstances of the applicant's residence in the United States during the requisite period. Accordingly, this affidavit can also be given limited probative value in establishing the applicant's continuous residence in the United States.

The applicant was interviewed by a CIS officer on March 1, 2006. At the time of her interview, she stated that she entered the United States through Mexico, in 1981, with her uncle, and that her uncle met her in 1981. She stated that she went to Brazil in 1983 and obtained a visa to return to the United States. The applicant submitted the following additional evidence on the day of her interview:

- A notarized letter dated February 26, 2006, from [REDACTED] who is identified as the Presiding Overseer of the Jackson Heights English Congregation of Jehovah's Witnesses in East Elmhurst, New York. He states that the applicant started to study the Bible in 1981, moved to San

Diego where she was baptized in February 1992, and has been a member of the Jackson Heights congregation since returning to New York in 1994. While [REDACTED] corroborates the applicant's statement that she has been a member of the Jackson Heights, New York Jehovah's Witness congregation since 1994, it is unclear from this statement whether he has any direct, personal knowledge of the applicant's residence in the United States during the requisite period. While he states that the applicant began to study the Bible in 1981, the source of this information is unknown, and he does not indicate where she was residing at that time.

The regulation at 8 C.F.R. § 245a.2(d)(3)(v) sets forth guidelines for attestations provided by churches and other organizations. These guidelines provide a basis for a flexible standard of the information that such affidavits should contain in order to render them probative for the purpose of comparison with the other evidence of record. According to the guidelines set forth in 8 C.F.R. §§ 245a.2(d)(3)(v)(A) through (G), a signed attestation from an organization should: (1) identify the applicant by name; (2) be signed by an official whose title is shown; (3) show inclusive dates of membership; (4) state the address where the applicant resided during the membership period; (5) be printed on the letterhead of the organization; (6) establish how the author knows the applicant and (6) establish the origin of the information being attested to. Here, [REDACTED] does not state the applicant's address of residence, establish the origin of the information being attested to, or establish how he knows the applicant, or whether he knew her during the requisite period. As it does not conform to the regulatory standards, this affidavit has limited probative value.

- A declaration from [REDACTED] " signed on February 17, 2006, stating that the applicant was a passenger in a June 1983 tour organized by the company to Disney World with stops in Washington, D.C. and New York, New York.
- A notarized statement from [REDACTED], the applicant's father, dated February 24, 2006. He states that he and his wife authorized his daughter to travel to the United States, accompanied by his cousin, in August 1981, to live with [REDACTED] and his wife in Marathon, New York. He stated that the decision was motivated by his family's "grave financial situation." He provides no details regarding how the applicant gained entry to the United States in 1981, how he knew Mr. [REDACTED] an Indian national residing in New York State, or how he obtained [REDACTED]'s agreement to house, educate and care for his child. [REDACTED] does not provide any information regarding where the applicant resided after 1981. Because of this significant lack of detail, and because he is a close family member to the applicant, [REDACTED]'s testimony lacks credibility and probative value.

Photographs of the applicant in the United States, only some of which were dated. The dated photographs, based on the subject matter, depict the applicant in Washington, D.C, New York City and Disney World in 1983. The dates, which appear to have been stamped on the photographs automatically during processing, read: "JUL K83" and "AGO K83," which suggests that the photographs were taken during the tour of these U.S. locations the applicant took with [REDACTED] in June 1983. Notably, the dates appear to be in the Portuguese language, in which the word for "August" is "agosto" and would thus be abbreviated "ago," as opposed to the usual English

abbreviation of "[REDACTED]". Therefore, the date stamps suggest that these photographs were likely developed in Brazil in July and August 1983, during a time which the applicant states she was in the United States.

As noted in the director's decision, CIS records show that the applicant was admitted to the United States on a B2 visa in Miami, Florida on June 26, 1983, and that she departed on July 11, 1983. As discussed further below, the applicant denies this departure. 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 also submitted two photographs depicting her at Big Bear Lake, a resort in California. These photographs, which are not dated, confirm that the applicant was physically present in California on at least one occasion, but are insufficient to corroborate her claim that she resided in Southern California continuously from February 1985 through the end of the requisite period.

On March 1, 2006, the director issued a Notice of Intent to Deny (NOID) the application. The director acknowledged the evidence submitted by the applicant, but noted that such evidence was insufficient to establish the applicant's continuous residence for the entire statutory period between January 1, 1982 and May 4, 1988. The director noted the lack of corroborating evidence pertaining to the applicant's period of residence with [REDACTED]. The director found that the photographs and letter from [REDACTED] show that the applicant was in the United States in 1983, but not that she resided here at that time. The director further noted that the affidavits from [REDACTED] and [REDACTED] supported the applicant's claims that she was in the United States in 1985 and 1987, but not before that. The director afforded the applicant 30 days in which to submit additional evidence in support of her application.

In response to the NOID, the applicant submitted the following additional documentation:

A notarized letter dated March 23, 2006, from [REDACTED] Field Service Overseer of the Marathon Congregation of Jehovah's Witnesses in Marathon, New York. [REDACTED] certifies that the applicant joined the Marathon Congregation in October 1981 and remained with that congregation until November 1982. He stated that during that time, she participated in congregation meetings, went out in the field ministry, and gave student talks on Bible-based subjects in the Theocratic Ministry School. [REDACTED] indicated that the applicant moved to New York City and attended the Jackson Heights Congregation in Queens in 1982. It is noted that [REDACTED] statement that the applicant joined a Jehovah's Witness congregation in 1981, and was even teaching subjects to youth and participating in field ministry activities at the age of 13, is inconsistent with information the applicant provided on her Form I-687, on which she indicated that her first association with the Jehovah's Witnesses was in 1985 in California. It is also inconsistent with the previous statement provided by [REDACTED], who stated that the applicant joined the Jackson Heights, New York congregation in 1992.

- A new notarized letter from [REDACTED] dated March 15, 2006. [REDACTED] states that the applicant has been a member of the Jackson Heights Congregation of Jehovah's Witnesses since November 1982, and that she "associated with various congregations of Jehovah's Witnesses in the sates of New York and California when temporarily away from New York." This statement is inconsistent with [REDACTED] previous statement that the applicant became a member of the Jackson Heights, New York congregation in 1994. No explanation is provided for these changes.

As noted above, the regulations at 8 C.F.R. § 245a.2(d)(3)(v) sets forth guidelines for attestations provided by churches and other organizations. Here, the statements of [REDACTED] and [REDACTED] do not include the applicant's addresses of residence for the periods of her claimed membership, establish the origin of the information being attested to, or establish how the authors know the applicant, or whether they knew her during the requisite period. As these statements do not conform to the regulatory standards and contain inconsistencies when compared to the other evidence of record, these affidavits have limited probative value.

- A notarized letter dated March 14, 2006 from [REDACTED] of [REDACTED] in Oceanside, California, who states that she has known the applicant since 1985. She states that the applicant worked for her as a house cleaner between 1985 and 1988, and that she lived in her home and worked as a housekeeper between 1988 and 1992. [REDACTED] provided a copy of her U.S. passport as proof of her identity. When comparing [REDACTED] statement to the applicant's statements on her Form I-687, it is noted that the applicant did state that she lived at [REDACTED] from April 1988 to January 1992. However, she did not indicate that she ever worked for [REDACTED]. The applicant stated on Form I-687 that she worked at "Grand Deli" in Carlsbad, California from 1985 to December 1987, and worked as a housekeeper for [REDACTED] and [REDACTED] in Vista, California from January 1988 to December 1991. Because it is inconsistent with the applicant's own testimony, [REDACTED] statement is not credible and lacks probative value.
- Six original color photographs, including photographs depicting the applicant in front of a "Kingdom Hall," in front of a "Watchtower" building at [REDACTED] and at a zoo. The photographs are not dated and no further explanation was provided by the applicant, who simply stated that the photographs show her presence in the United States.

In a letter accompanying her response to the NOID, the applicant stated that she had requested records from a clinic she visited during her first winter in the United States in 1981 or 1982, but had been informed that the records were destroyed after the passage of time. The applicant had previously testified during her interview with a CIS officer that she did not see a doctor in the United States during the requisite period. She provided no explanation for this inconsistency. The applicant also provided extensive documentation to establish that [REDACTED] was in the United States since 1962. She provided copies of [REDACTED] passports, noted that he traveled to India as a missionary from 1985 to 1989, and explained that [REDACTED] travel led her to move to California at that time. The applicant also stated that "[o]rdinary correspondence and other documents that seemed unimportant at the time were culled in preparation to go on this missionary assignment."

The director denied the application on July 26, 2006. In denying the application, the director found that the additional evidence and information provided was insufficient to overcome the reasons for denial set forth in the NOID. The director acknowledged the additional affidavits submitted, but found they were not credible as there was no proof of the affiant's relationship with the affiants or proof that they were in the United States during the requisite period. The director further noted that while the record shows that the applicant entered the United States with a B2 visa in June 1983, CIS records show that she departed from the United States on July 11, 1983, therefore calling into question the veracity of the applicant's testimony that her sole absence from the United States was from May to June 1983. Finally, the director found that the affidavit from [REDACTED] was acceptable as evidence of the applicant's presence in the United States, but insufficient to establish her continuous residence for the duration of the requisite period, particularly given the inconsistencies in the record.

On appeal, the applicant submits additional evidence to establish that [REDACTED] and [REDACTED] are United States citizens, and evidence to establish that [REDACTED] and [REDACTED] resided in the United States since the 1980s. The applicant states that she did not return to Brazil in July 1983 as stated in the director's decision. She states that she is enclosing dated photographs that place her in the United States in August 1983, and notes that the writing on the processing paper is in English, thus proving that she had the photographs developed while in the United States. Finally, the applicant asserts that all of the affidavits submitted provide strong proof that she has resided in the United States continuously since 1981.

The applicant submits original color photographs that show her in New York City, Washington, D.C. and Orlando, copies of which were previously incorporated into the record. The applicant indicates that a number of the photographs depict her in the United States in August 1983 and thus establish that she did not return to Brazil in July 1983, as indicated in CIS records. However, as noted above, the dates on the dated photographs, at least on those dated "AGO 1983," are in Portuguese. Again, since the applicant indicates that she participated in an organized tour of Disney World, Washington, D.C. and New York City, that began in June 1983, it is reasonable to believe that all of these photographs were actually taken during this tour, in late June or early July 1983.

The applicant also submits several undated photographs which she indicates show her in New York and California "after 1983." However, due to the uncertain dates and locations, these photographs have little probative value in establishing her residence and physical presence during the requisite period.

Furthermore, while the evidence on appeal is sufficient to establish that the persons who submitted affidavits on the applicant's behalf were in the United States during the requisite period, the content of the affidavits remains deficient in detail and the inconsistencies discussed above have not been resolved.

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).

As discussed above, the affiant has relied on affidavits so deficient in detail that they have very limited probative value. The affiants have provided very little verifiable information, have not specifically corroborated the information provided by the applicant on her Form I-687 regarding her places of residence or employment during the requisite period, and have in fact provided information that is inconsistent with some of the applicant's own testimony. The only clearly dated photographs show the applicant in the United States on an organized trip that left from Brazil and CIS records show that the applicant did in fact depart from the United States at the conclusion of that trip.

Other than the photographs and affidavits, the applicant has provided no contemporaneous evidence of residence in the United States relating to the 1981-88 period that can be clearly associated with her. 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 inconsistencies in the record and the applicant's reliance upon affidavits and photographs 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.