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FILE:   
MSC-05-239-14411

Office: LOS ANGELES

Date: JUL 03 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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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, Los Angeles. 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, on May 27, 2005 (together, the I-687 Application). 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 noting that the applicant provided a letter from [REDACTED] that was inconsistent with the applicant's statements. 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 submitted a Form I-694 Notice of Appeal of Decision Under Section 210 or 245A and a written statement. The applicant stated that, in accordance with her contract, "when [she] started to work with [REDACTED] [in] 1979, [her] initial salary was \$60.00 a week" for working "Monday through Thursday." The applicant also stated that she still works for [REDACTED] on a "full-time basis." As of this date, the AAO has not received any additional evidence from counsel or the applicant. Therefore, the record is complete.

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. 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).

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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

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. *See* 8 C.F.R. § 245a.2(d)(6). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

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 entered before 1982 and resided in the United States for the requisite period.

The record shows that the applicant submitted a Form I-687 Application and Supplement to Citizenship and Immigration Services (CIS) on May 27, 2005. At part #30 of the Form I-687 application where applicants are asked to list all residences in the United States since first entry,

the applicant listed her first address in the United States as [REDACTED], Santa Ana, California, from January 1979 to March 1989. At part #33, she listed her first employment in the United States as a babysitter in Irvine, California, from June 1979 to August 1988. At part #32, the applicant listed two absences from the United States since entry. According to the Form I-687, the applicant visited Mexico from December 1987 to January 1988 and from June 1989 to June 1989.

The applicant has provided a notarized affidavit, three declarations, two letters, a copy of a post-marked letter, a copy of the applicant's employment contract, receipts from Koala Jewelry, photographs without dates or explanations, a copy of her birth certificate, and a copy of her California identification card. The applicant's birth certificate and California identification card are evidence of the applicant's identity, but do not demonstrate that she entered before January 1, 1982 and resided in the United States for the requisite period. The following evidence relates to the requisite period:

- A notarized affidavit from [REDACTED] dated March 17, 2006. The declarant states that she lives in Anaheim, California. The declarant states that he has known the applicant since 1979. He states that he and the applicant "resided at [REDACTED] Santa Ana, California." The declarant adds that the applicant is a "friend" and that they have "maintained [their] friendship through out all these years." Although the declarant states that he lived with the applicant, he does not indicate when or where he met the applicant, or provide any details to lend credibility to a 27-year relationship with the applicant. Given these deficiencies, this statement has minimal probative value in supporting the applicant's claims that she entered the United States in 1979 and resided in the United States for the entire requisite period.
- A declaration from [REDACTED] dated March 27, 2006 that is not notarized. The declarant states that she lives in Santa Ana, California. The declarant states that she met the applicant "for the first time in Santa Ana, California in 1981" and that the applicant was her mother's neighbor. The declarant states that she knows that the applicant arrived in the United States before 1982 "because she met her before [1982] when [she] used to visit [her] mom." The declarant adds that she knows that "the applicant was living in the United States because [she] used to see [the applicant] when [she] visited [her] mom and then when [she] moved to [her] mom's house [she] used to see [the applicant] more frequently." Although the declarant states that she has known the applicant since 1981, the statement does not supply enough details to lend credibility to a 25-year relationship with the applicant. For instance, the declarant does not indicate under what circumstances she met the applicant in 1981, how she dates her initial acquaintance with the applicant, or how frequently she had contact with the applicant. Given these deficiencies, this statement has minimal probative value in supporting the applicant's claims that she entered the United States in 1979 and resided in the United States for the entire requisite period.

- A declaration from [REDACTED] dated March 27, 2006 that is not notarized. The declarant states that she lives in Orange, California. The declarant states that she met the applicant “for the first time in Santa Ana, California [in] 1979.” The declarant states that she “was living at [REDACTED] Santa Ana, California at the time and met the applicant “at [the declarant’s] house when [the applicant] first arrived.” The declarant states that she knows that the applicant arrived in the United States before 1982 “because we lived at the same address since 1979.” The declarant adds that she and the applicant lived together from January 1979 to 1998. Although the declarant states that she has known the applicant since 1979, the statement does not supply enough details to lend credibility to a 27-year relationship with the applicant. For instance, the declarant does not indicate under what circumstances she met the applicant in 1979 and how she dates her initial acquaintance with the applicant. Given these deficiencies, this statement has minimal probative value in supporting the applicant's claims that she entered the United States in 1979 and resided in the United States for the entire requisite period.
- A declaration from [REDACTED] dated March 27, 2006 that is not notarized. The declarant states that he lives in Orange, California. The declarant states that he met the applicant for the first time at [REDACTED], Santa Ana, California in 1982. The declarant adds that he knows that the applicant lived at [REDACTED] until 1998 because he “visited the home many time from 1982 to 1998.” This statement is inconsistent with the applicant’s Form I-687 which indicates that the applicant lived at [REDACTED] Santa Ana, California from January 1979 to March 1989. Although the declarant states that he has known the applicant since 1982, the statement does not supply enough details to lend credibility to a 24-year relationship with the applicant. For instance, the declarant does not indicate under what circumstances he met the applicant in 1982, how he dates his initial acquaintance with the applicant, or how frequently he had contact with the applicant. Given these deficiencies, this statement has minimal probative value in supporting the applicant's claims that she entered the United States in 1979 and resided in the United States for the entire requisite period.
- A declaration from [REDACTED] dated May 18, 2005 that is not notarized. The declarant states that she lives in Orange, California. The declarant states that she met the applicant “for the first time in Mexico in 1940” and that the applicant is her cousin. The declarant states that the applicant arrived in the United States in January 1979. The declarant states that she lived at [REDACTED] Santa Ana, California when the applicant arrived in the United States. The declarant states that she knows that the applicant arrived in the United States before 1982 “because we lived at the same address since 1979.” The declarant adds that she and the applicant lived together from January 1979 to the present. Although the declarant states that she has known the applicant since 1979, the statement does not supply enough details to lend credibility to a 26-year relationship with the applicant. The declarant does not indicate under what circumstances she met the applicant in 1979 and how she dates her initial acquaintance with the applicant. Given these deficiencies, this statement has minimal probative value

in supporting the applicant's claims that she entered the United States in 1979 and resided in the United States for the entire requisite period.

- A handwritten letter from [REDACTED] dated March 28, 2006. The declarant states that she has known that applicant "since about 1983." The declarant states that she met the applicant "through [the declarant's] aunt and grandparents when they lived in Santa Ana" because the applicant was their neighbor and soon became a "family friend." The declarant adds that she has had the applicant at her house "off and on since [they] met." Although the declarant states that she has known the applicant since 1983, the statement does not supply enough details to lend credibility to a 23-year relationship with the applicant. For instance, the declarant does not indicate under what circumstances she met the applicant in 1983, how she dates her initial acquaintance with the applicant, or how frequently she had contact with the applicant. The statement is not notarized and is not accompanied by identification. Given these deficiencies, this statement has minimal probative value in supporting the applicant's claims that she entered the United States in 1979 and resided in the United States for the entire requisite period.
- A letter from [REDACTED] dated May 17, 2005. The declarant states that she lived in Irvine, California. The declarant states that the applicant was "employed as a babysitter from June 1979 until August 1988." The declarant also states that the applicant was employed during the entire period and was never laid off. The declarant adds that the "applicant held the 40 hours [sic] full-time job of attendant person with an hourly wage." The record of proceeding contains an employment contract written on Alex Maid Service letterhead and dated June 6, 1979. The contract states that [REDACTED] hired the applicant as a housekeeper for \$240 a month or \$60 per week. **The letter fails to meet** certain regulatory standards set forth at 8 C.F.R. § 245a.2(d)(3)(i), which provide that letters from employers must include the applicant's address at the time of employment; exact period of employment; whether the information was taken from official company records and where records are located and whether CIS may have access to the records (if records are unavailable, an affidavit form-letter stating that the employment records are unavailable may be accepted which shall be signed, attested to by the employer under penalty of perjury and shall state the employer's willingness to come forward and give testimony if requested). The statement from [REDACTED] does not include much of the required information and can only be accorded minimal weight as evidence of the applicant's residence in the United States for the duration of the requisite period.
- A copy of a postmarked envelope dated October 9, 1979. The first envelope is addressed to [REDACTED] at an address in Mexico and lists the applicant's name and address in the top left-hand corner. Although the envelope includes an address for the applicant that is listed in the Form I-687, the envelope has minimal weight as evidence of residence.

- Copies of receipts from Koala Jewelry dated September 18, 1981, December 20, 1982, February 14, 1984 which includes the applicant's name and an address listed on the Form I-687. Each receipt includes a receipt number. The receipt numbers for the receipts listed above are [REDACTED], [REDACTED], and [REDACTED]. Although receipts and invoices for services and purchases may indicate presence in the United States on the date issued, they can only be accorded minimal weight as evidence of residence. Furthermore, in her denial letter, the director stated that the receipts are not credible evidence because if they are to be taken at face value, then the jewelry store only issued 18 receipts to its customers from September 18, 1981 to February 14, 1984 and of those, 3 receipts were issued to the applicant. Neither counsel nor the applicant has provided an explanation for the numbering of the receipts submitted.

The remaining evidence in the record is comprised of the applicant's statements, in which she claims to have entered the United States in 1979 and to have resided for the duration of the requisite period in California. As noted above, to meet her burden of proof, the applicant must provide evidence of eligibility apart from her own testimony. In this case, her assertions regarding her entry are not supported by any credible evidence in the record.

The director issued a notice of intent to deny (NOID) on December 29, 2005. The director denied the application for temporary residence on March 4, 2006. In denying the application, the director found that the applicant failed to establish that she entered the United States prior to January 1, 1982 or that she met the necessary residency or continuous physical presence requirements. The director noted that the applicant provided a letter from [REDACTED] that was inconsistent with the applicant's statements and that the receipts from Koala Jewelry were not credible evidence due to the receipt numbering. Thus, the director determined that the applicant failed to meet her burden of proof by a preponderance of the evidence.

On appeal, the applicant stated that, in accordance with her contract, "when [she] started to work with [REDACTED] [in] 1979, [her] initial salary was \$60.00 a week" for working "Monday through Thursday." The applicant also stated that she still works for [REDACTED] on a "full-time basis." The applicant did not address the director's concerns regarding the inconsistencies between [REDACTED]'s statement and the applicant's statements or the director's concerns regarding the Koala Jewelry receipts. Neither counsel nor the applicant have submitted any additional evidence in support of her claim that she was physically present or had continuous residence in the United States during the entire requisite period or that she entered the United States in 1981.

In this case, the absence of sufficient credible and probative documentation to corroborate the applicant's claim of continuous residence for the requisite period seriously detracts from the credibility of her 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 lack of credible supporting documentation, it is concluded that the applicant has failed to establish by a preponderance of the evidence that she has

continuously resided in an unlawful status in the United States for the requisite period, 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.