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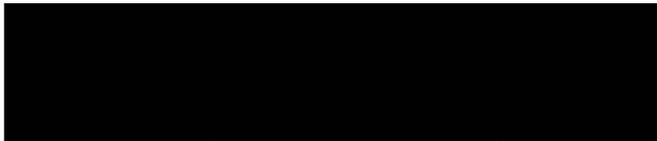
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE: MSC-05-302 13004

Office: NEWARK

Date: JUL 09 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. 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.

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, Newark. 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. 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, in her Notice of Intent to Deny (NOID), the director stated that the applicant had submitted evidence regarding her residence during the requisite period that was not consistent. She also noted that the applicant failed to submit evidence other than her own testimony to prove that she entered the United States prior to January 1, 1982. Therefore, the director found the applicant did not meet her burden of proving that she was eligible to adjust to Temporary Resident Status. The director afforded the applicant 30 days within which to submit additional evidence in support of her application. Though the director noted that her office received additional evidence in support of the application, which included previously submitted documents and a rebuttal to the director's NOID, she stated this was not sufficient to overcome her reasons for denial. Therefore, the director denied the application.

On appeal, the applicant asserts that she submitted sufficient evidence to meet her burden of proof. She states that the director considered irrelevant evidence in making her decision. She asserts that the director did not accord 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).

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) 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 period, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.2(d)(5).

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The “preponderance of the evidence” standard requires that the evidence demonstrate that the applicant's claim is “probably true,” where the determination of “truth” is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that “[t]ruth is to be determined not by the quantity of evidence alone but by its quality.” *Id.* at 80. Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the 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 applicant 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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his or her burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

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 her address in the United States during the requisite period to be [REDACTED] in Newark, New Jersey from March 1981 until June 1992. At part #31 where the applicant was asked to list all churches and organizations of which she was a member, she wrote “none.” At part #32 where the applicant was asked to list all of her absences from the United States, she indicated that she was absent once during the requisite

period, when she went to Brazil because of an emergency from January to February 1987. At part #33, where the applicant was asked to list all of her employment in the United States since she first entered, she showed she was self employed as a house cleaner in New York from October 1981 through the end of the requisite period.

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. 8 C.F.R. § 245a.2(d)(5). To meet his burden of proof, an applicant must provide evidence of eligibility apart from his or 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).

Here, the applicant submitted the following evidence that is relevant to her residence in the United States during the requisite period:

1) Documents from [REDACTED]:

- a) A declaration from [REDACTED] that is not dated or notarized. She submits the following with this declaration: a copy of her birth certificate that shows she was born in Newark, New Jersey on March 4, 1950; a photocopy of her United States Passport identification page; a Form 1099 showing [REDACTED] was compensated for work done for the New School for Social Research in New York in 1980; and minutes from a meeting at which [REDACTED] was present on June 13, 1986. In this declaration, [REDACTED] states that she met the applicant in March 1981 at her office. She states she met the applicant through a man named [REDACTED] who she indicates is now deceased who was her tenant. She states that the applicant resided in [REDACTED]'s apartment that was located at [REDACTED]. She goes on to say that she owns properties on [REDACTED] in Newark, New Jersey though [REDACTED]. She asserts that [REDACTED] introduced her to the applicant in March 1981 after the applicant had just arrived in the United States from Brazil. She states that after first meeting the applicant, she saw the applicant on a regular basis. She also states that her property manager, [REDACTED] rented one of her apartments to the applicant in 1993. Though the declarant states that she saw the applicant on a regular basis since meeting her in March 1981, she does not specify the frequency with which she saw the applicant during the requisite period. She fails to indicate whether there were periods of time during the requisite period when she did not see the applicant.

- b) An affidavit from [REDACTED] that is dated May 10, 2005. The affiant submitted a photocopy of her New Jersey Auto Operator License issued to her on June 11, 2003. The affiant states that she is an American Citizen. She also asserts that the applicant has been her acquaintance since March 1981 when the applicant rented her property at [REDACTED] and that she has known the applicant since that date. However, the affiant does not indicate the frequency with which she saw the applicant during the requisite period. She further fails to indicate whether there were periods of time during the requisite period when she did not see the applicant. Further, this affiant has provided a detailed account of her first meeting in March 1981 in which she stated that rather than being her tenant, the applicant was residing with a man named [REDACTED] in 1981. The statement made by the affiant in this affidavit is not consistent with the statement she made in this previous declaration.
- c) A Property Management Agreement that was notarized on February 10, 2006. This Agreement states that [REDACTED] owns property including but not limited to [REDACTED].
- d) A deed showing that [REDACTED] owned [REDACTED] in Newark, New Jersey as of August 29, 2003.
- e) A letter from [REDACTED] that is dated January 9, 2006. In this letter, she states that she employed declarant [REDACTED] in her company, [REDACTED] from May 1987 until the date she submitted this letter. Though this letter does not prove the applicant's presence in the United States, it is proof that a declarant from whom she submitted a declaration was present in the United States from 1987 until the end of the requisite period.
- f) An affidavit from [REDACTED] that is notarized and is dated November 15, 2005. In this document, [REDACTED] shows that she received rent monthly from the applicant from March 1981 until June 1992. She states that she is the building manager of this property. Here, it is noted that [REDACTED] has previously stated in a declaration that [REDACTED], and not the applicant rented an apartment from her that the applicant resided with him beginning in March 1981. In this same declaration she stated that the applicant began renting an apartment from her in 1993. This inconsistency casts doubt on this document as proof of the applicant's residency in the United States during the requisite period.
- 2) Documents from [REDACTED]:
- a) A declaration from [REDACTED] that is not dated. This declarant states that he came from Brazil to the United States in 1981. He states asserts that [REDACTED], who helped many immigrants, helped him rent an apartment that was located at [REDACTED] in 1983. The declarant further states that he first met the applicant at a church meeting in March 1986 in Queens, New York at a Baptist church where she was attending church with

It is noted that the applicant showed she was not a member of any churches on her Form I-687.

- b) [REDACTED] submits a photocopy of the identification page of this United States Passport issued to him in March 1997, a photocopy of his Brazilian passport issued to him on August 29, 1980. Page seven of this passport indicates that he obtained a B-2 Visa from the United States Consulate in Sao Paulo on January 14, 1981 and entered the United States in January 25, 1981. Page nine of this passport bears an H-1 visa issued to him in October 1982 by the United States Consulate in Sao Paul. This page also shows he entered the United States on January 15, 1983. Page 13 of this passport shows he was issued an additional H-1 visa by the consulate in Sao Paulo in September 1983. This visa was cancelled without prejudice. Page 15 of this passport shows he was issued another H-1 visa on September 12, 1983 from the Consulate at Sao Paulo to work at Parmatic Filter Corporation and page 14 of this passport shows he entered the United States through New York on September 18, 1983. Page 17 of this visa indicates the applicant was issued an additional H-1 visa by the Sao Paulo Consulate on December 21, 1984 to work for Angar Scientific Company in Cedar Knolls, New Jersey. This passport indicates that there were periods of time during the requisite period when [REDACTED] was not in the United States. Because his entire passport was not submitted, the AAO cannot determine the specific lengths of time of his absences.
  - c) Evidence that declarant [REDACTED] worked in the United States for Angar Scientific Company and Industrial Devices, Inc. from March 8, 1984 until the end of the requisite period.
  - d) A Resident Alien card issued to [REDACTED].”
  - e) Proof that the [REDACTED] was present in the United States during the requisite period as follows: A letter from the Dean of Student Affairs of Essex County College in Newark, New Jersey informing [REDACTED] that he has achieved the Dean’s List for courses taken during the Fall 1984 semester; a letter dated December 19, 1986 confirming that [REDACTED] is an employee at Angar Scientific Company in New Jersey; a statement from Angar Scientific that shows [REDACTED] was hired on March 8, 1984, entered on duty on June 1, 1985 and was terminated on July 3, 1987; and a letter from [REDACTED] in which he states that he is resigning from his current position in April 12, 1993 after having worked for Industrial Devices, Inc. for six years.
  - f) An affidavit from [REDACTED] that was notarized on May 10, 2005. The affiant submitted a photocopy of his New Jersey Auto Operator License issued to him February 22, 2002 with this affidavit. The affiant states that he met the applicant at a church meeting in Queens, New York in March 1986. Though not required to do so, this declarant submitted a photocopy of his New Jersey driver’s license with his declaration.
- 3) Documents from [REDACTED]:

- a) An affidavit from [REDACTED]. This affiant submitted photocopies of the identity pages of two passports, one which was issued to her in March 1997 and the other of which was issued to her in August 1980. Page seven of her older passport shows the affiant was issued a B-2 visa by the consulate in January 1982 and that she entered the United States on January 25, 1981. Page 15 of this passport shows she was issued an H-4 visa in the consulate of the United States in Sao Paulo in December 1982 and that she entered the United States in January 15, 1983. The affiant states she met the applicant in May 1987 at a mother's day celebration at St. James Church. She states she knows the applicant was residing in the United States in early 1981 because people told her that the applicant was. She shows her employment in the United States from February 1983 until the end of the requisite period. It is noted that this declarant indicated she was a student when she first entered the United States. She provides a detailed account of how she came to know the applicant, how she met her at church and her relationship with her during the requisite period. It is noted that the applicant showed that she was not a member of any churches on her Form I-687.
  - b) A Form I-181 issued to declarant [REDACTED] on November 25 1986 that shows she resided in Newark on that date and passports from this declarant showing entries into the United States during the requisite period.
  - c) Birth certificates showing that declarants [REDACTED] and [REDACTED] had children born in the United Sates on December 30, 1983 and March 18, 1987.
  - d) An affidavit from [REDACTED] that was notarized on May 10, 2005. The affiant submits a photocopy of her New Jersey Auto Operator License issued to her on February 4, 2002 with her affidavit. The affiant asserts that she has been friends with the applicant since May 1987 when she met the applicant at church in Newark.
- 4) A declaration from St. James Church signed by [REDACTED] and dated November 29, 2005. This letter asserts that the applicant has been a member of this church since 1987. It is noted that the applicant indicated she had never been a member of any churches in the United States when she submitted her Form I-687.
  - 5) Though it does not pertain to the requisite period, it is noted that the record also contains the applicant's marriage certificate issued in Milan, Italy on June 15, 1992. This marriage certificate shows the applicant was a resident of Sao Paulo, Brazil at the time she was married in 1992. This casts doubt on the applicant's assertion on her Form I-687 that she was residing in New Jersey and New York in 1992. This certificate also shows that the applicant was married in Milan, Italy on June 15, 1992. It is noted here that the applicant did indicate that she was absent from the United States from June to July 1992 on her Form I-687. However, she indicated here that she was in Brazil at that time because her mother was sick. Because this marriage certificate indicates that the applicant was residing in Brazil in 1992 when she asserts

she was residing in the United States for the duration of that year, and because this certificate also shows the applicant was present in Italy in 1992 when she did not show she was ever in Italy on her Form I-687, doubt is cast on whether the applicant has accurately represented her residence in the United States and absences from the United States on her Form I-687.

The director issued a Notice of Intent to Deny (NOID) to the applicant on July 28, 2007. In this NOID, the director stated that the applicant failed to meet her burden of proof for the following reasons:

1. Though the applicant claimed to have entered the United States in March 1981 through Mexico, she failed to submit evidence that she traveled to Mexico in 1981.
2. Though the applicant claimed she traveled to Brazil from January to February 1987, she did not provide proof that she took this trip.
3. That affiant [REDACTED] did not meet the applicant until March 1986 and [REDACTED] did not meet the applicant until May 1987 and therefore neither of these affiants could personally know whether the applicant resided continuously in the United States for the duration of the requisite period.
4. That affiant [REDACTED] submitted both a letter showing that she received rent from the applicant every month from March 1981 until June 1992. However, the director notes, as did the AAO, that the applicant has submitted evidence asserting that she did not pay rent for an apartment from [REDACTED] at that time. Other evidence in the record states the applicant began renting an apartment from [REDACTED] in 1993.
5. That on her Form I-687 the applicant stated she traveled to Brazil from June 1992 until July 1992 because her mother was ill. However, her marriage certificate in the record shows she was in Milan, Italy in June 1992 which is not consistent with what the applicant indicated on her Form I-687. As was previously noted by the AAO, this marriage certificate also states that the applicant's residence at the time the marriage certificate was issued was in Sao Paulo, Brazil.
6. That the applicant failed to submit evidence that she traveled outside of the United States during the requisite period and failed to attest to having attempted to file an application for legalization during the original filing period.
7. That the applicant did not submit sufficient evidence to meet her burden of proving that she entered the United States prior to January 1, 1982 and then resided continuously in an unlawful status since that time and for the duration of the requisite period.
8. That the applicant failed to submit sufficient evidence to meet her burden of proving that she was continuously physically present in the United States from November 6, 1986 until the

date that the applicant was turned away when she attempted to file her Form I-687 during the original filing period.

9. That the applicant failed to establish that she attempted to file for legalization during the original filing period.

The director concluded that the evidence submitted by the applicant failed to enable her to meet her burden of proving that she was eligible to adjust status to that of a temporary resident under Section 245 of the Immigration and Nationality Act (Act.) The director granted the applicant 30 days within which to submit additional evidence in support of her application.

In response to the director's NOID, the applicant submitted a statement. In this statement she asserted that she resided continuously in the United States for the duration of the requisite period. She asserts that CIS is requesting her to submit proof of her entry without inspection. It is noted here that the director referred to the applicant's failure to submit proof of her initial entry into Mexico rather than to her entry without inspection into the United States. She goes on to state that she submitted sufficient evidence to prove her residence in the United States during the requisite period. She asserts that the inconsistency regarding her absence in 1992 that the director noted was outside of the requisite period and is therefore irrelevant to this proceeding. However, doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The applicant further states in response to the director's NOID that she believes CIS did not accord sufficient weight to the evidence she submitted in support of her application.

The director denied the application for temporary residence on September 20, 2006. In her decision, the director noted that her office received a rebuttal to her NOID, but she stated that this rebuttal was not sufficient to overcome her reasons for denial as stated in her NOID. Therefore, she denied the application.

On appeal, the applicant asserts that she submitted sufficient evidence of her residence in the United States during the requisite period to meet her burden of proof. She notes that the director cited her absence from the United States in 1992 as one of the reasons why her application was denied. She asserts that she is not required to account for absences from the United States subsequent to the end of the requisite period. She states that the director did not accord due weight to the evidence she submitted in support of her application. She refers to the rent receipts and job letters she submitted. She asserts that the evidence she submitted in support of her application and the testimony she gave at the time of her interview with a CIS officer pursuant to her Form I-687 application are sufficient to allow her to meet her burden of proof.

After reviewing the evidence in the records, the AAO concludes that the applicant has failed to meet her burden of proving that she resided continuously in the United States for the duration of

the requisite period. Though the applicant submitted a statement that asserted that she paid rent monthly from March 1981 through the end of the requisite period, the same individual who submitted this statement submitted a declaration on which she asserted that the applicant was residing with a [REDACTED] who was paying rent for the apartment where the applicant was residing. Therefore, the credibility of the rent receipt is questioned. The applicant was informed of this discrepancy by the director in her NOID and failed to provide an explanation for this inconsistency.

Further, though 1992 was after the conclusion of the requisite period, the applicant's Form I-687 on which she was asked to list all of her absences from the United States does not show that she was ever in Italy. That she has submitted a document that shows she was married in Italy and residing in Brazil in 1992 when she stated on that form that she was visiting Brazil in 1992 and that she resided in New Jersey and New York at that time is a significant discrepancy. This casts doubt on whether the applicant has accurately represented her residency in the United States during and subsequent to the requisite period. It also casts doubt on whether she has accurately indicated her absences from the United States both during and subsequent to the requisite period to CIS.

This applicant has submitted documents from [REDACTED] who asserted both that the applicant was not her tenant during the requisite period and that the applicant paid rent to her monthly during that time. She has submitted affidavits from [REDACTED] and [REDACTED] who both claim to have met the applicant at churches when the applicant showed on her Form I-687 that she was never a member of any churches. Similarly, she has submitted a letter from a church that states she was a member of the church since 1987. **Again, it is noted that the applicant asserted that she was not a member of any church on her Form I-687.** She has also submitted a marriage certificate that shows she was present in Italy in 1992 and that she was residing in Brazil at the time the certificate was issued. Both her presence in Italy in 1992 and her residence in Brazil at that time are not consistent with what she showed on her Form I-687. Though she has submitted documents that indicate the affiants from whom she submitted documents were present in the United States during the requisite period, she has failed to submit consistent, credible documents that prove that she resided continuously in the United States for the duration of the requisite period for the reasons noted.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, as well as the inconsistencies and contradictions noted in the record, seriously detract 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 inconsistencies in the record and the lack of credible supporting documentation, it is concluded that she 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