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FILE: [REDACTED]
MSC-05-285-14240

Office: LOS ANGELES

Date: **JUL 11 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. Wienmann", written over a light gray rectangular background.

Robert F. Wienmann, 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 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. The director acknowledged that the applicant submitted affidavits from individuals who claimed to have knowledge of the beneficiary's residence in the United States during the requisite period, but noted that the affidavits were insufficient to establish the beneficiary's continuous residence in the United States. The director also noted other facts in the record which the director believed cast doubt on the credibility of the applicant's claim. The director denied the application, finding that the applicant had not met her burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, the applicant asserts that she was confused during her interview and provided the wrong dates of her residency to the Citizenship and Immigration Service (CIS) officer. She also submitted copies of her driver's license and Social Security card as evidence of her alias.

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).

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 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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet 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 12, 2005. The applicant signed this form under penalty of perjury, certifying that the information she provided is true and correct. 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 initially indicated that she resided [REDACTED] Pacoima, California from 1976 until 1990. However, during her interview on July 18, 2006, the applicant explained that she lived at the Sunburst address from 1981 until 1983 and that she could not remember the address to which she moved in 1984 through 1986.

It is also noted that the applicant submitted her I-687 application under the name “[REDACTED] b.” As evidence of her identity, pursuant to 8 C.F.R. 245a.2(d)(2), the applicant submitted a copy of her original birth certificate with accompanying English translation. The birth certificate indicates the name [REDACTED].” The applicant then submitted documentation that refers to [REDACTED] and [REDACTED].

Because the record of proceedings reflects two different names, the applicant has the burden of proving that she was in fact the person who used each name. 8 C.F.R. § 245a.2(d)(2). To meet the requirements of this regulation, documentation must be submitted to prove the common identity, i.e., that the assumed name(s) were in fact used by the applicant. The most persuasive evidence is “a document issued in the assumed name which identifies the applicant by photograph, fingerprint or

detailed physical description. Other evidence which will be considered is affidavits(s) by a person or persons other than the applicant made under oath, which identify the affiant by name and address, state the affiant's relationship to the applicant and the basis of the affiant's knowledge of the applicant's use of the assumed name." 8 C.F.R. § 245a.2(d)(2). On appeal, the applicant has submitted her California Driver's license indicating the alias, [REDACTED] and her Employment Authorization Document (EAD) indicating the alias [REDACTED]. Therefore, the evidence submitted on behalf of [REDACTED] will be evaluated for its probative value.

Accordingly, in support of her continuous residency claim, the applicant submitted the following evidence:

- A declaration from [REDACTED], who states that he was living in Pacoima, California when the applicant, his sister-in-law, arrived in the United States in 1976. Mr. [REDACTED] states that he regularly spoke to the applicant on the telephone and visited her, and accompanied her when she attempted to submit her legalization application in December 1987. He then refers to the applicant as "my niece [REDACTED]" and goes on to state that "I remember that [REDACTED] was very nervous and anxious to turn in her application." It is also noted that during her interview, the applicant indicated that [REDACTED] was her friend, whom she met in 1985. Given the references to [REDACTED] and the inconsistencies in [REDACTED] references to his "sister-in-law" and "niece," this statement is not credible and will be given no weight.
- A declaration from [REDACTED] who states that the applicant is her niece. She further states that the applicant came to the United States in 1976 and that she accompanied her to the INS office in 1987 to file an application for legalization. Like the declaration above, [REDACTED] states that "I remember that [REDACTED] was very nervous and anxious to turn in her application." This diminishes the credibility of the declaration since the applicant's name is [REDACTED] not [REDACTED]. In addition, the declarant does not provide an address where the applicant resided in the United States, or indicate how frequently she had contact with her. Given these deficiencies, this statement has minimal probative value in supporting the applicant's claim that she entered the United States in 1976.
- An employment verification letter from Western States Leather Products, and signed by [REDACTED] and [REDACTED]. The letter indicates that the applicant worked for Western States since 1980. Although the statement is on typed company letterhead, it is not notarized. It also fails to meet certain regulatory standards set forth at 8 C.F.R. § 245a.2(d)(3)(i), which provides 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 by Mr. and Mrs. [REDACTED] is accompanied by W-2 statements for [REDACTED] for the years 1988, 1987, 1986, 1984 and 1981. While the employment verification letter does not

include much of the required information it will be afforded some weight as evidence of the applicant's residence in the United States for the duration of the requisite period since it is accompanied by W-2 wage statements for a portion of the requisite period. However, it is noted that the W-2 statements, along with a Social Security Wage Statement refer to [REDACTED] with a birthday of May 13, 1963. The applicant's birthday, as evidenced by her birth certificate, is September 15, 1963.

For the above stated reasons, the director determined that the applicant had not established by a preponderance of the evidence that she was eligible for the benefit sought, and denied the application on September 23, 2006.

On appeal, the applicant stated that she confused the dates of her arrival in her interview. She also submitted evidence of her alias as discussed above. She did not, however, address the inconsistencies cited with the submitted declarations. 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. at 591-92. Since the applicant has not addressed the inconsistencies in the record, the submitted declarations will be given minimal evidentiary weight.

Furthermore, while an applicant's failure to provide evidence other than affidavits shall not be the sole basis for finding that he or she failed to meet the continuous residency requirements, an application which is lacking in contemporaneous documentation cannot be deemed approvable if considerable periods of claimed continuous residence rely entirely on affidavits which are considerably lacking in certain basic and necessary information. As discussed above, the declarant's statements are significantly lacking in detail and do not establish that the affiants actually had personal knowledge of the events and circumstances of the applicant's residence in the United States. Further, this applicant has provided no contemporaneous evidence of residence in the United States relating to requisite period, and she has submitted inconsistent testimony pertaining to her travel outside the United States.

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. 77, 79-80 (Comm. 1989). The applicant has been given the opportunity to satisfy his burden of proof with a broad range of evidence pursuant to 8 C.F.R. § 245a.2(d)(3).

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 affidavits with minimal probative value, and her own inconsistent statements, 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