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U.S. Citizenship  
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[REDACTED]

FILE:

MSC 06 007 10796

Office: LOS ANGELES

Date:

**JUL 23 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.

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, California. 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 October 7, 2005. The applicant was interviewed on October 31, 2006 in connection with her Form I-687. The director denied the application on December 6, 2006. On appeal, the applicant submits a brief statement and affidavits previously submitted.

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 applicant attempted to file the application. 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 or attempting to file 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).

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.* 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).

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 establish her entry into the United States prior to January 1, 1982 and continuous unlawful residence since such date through the date she attempted to file the application.

The applicant does not provide any information regarding her entries and absences from the United States or her employment and addresses prior to 1991. The record includes numerous documents, including tax records, lease agreements, receipts, affidavits, and utility bills for events in 1990 through 2005. However, as these documents are not relevant to establishing the applicant's entry into the United States prior to January 1, 1982 and continuous unlawful residence to May 4, 1988 or the date the applicant attempted to file the Form I-687 application, these documents will not be discussed or itemized.

The record contains a previously submitted Form I-687 that was not filed but was apparently submitted along with an application for class membership. The submitted but unsigned Form I-687: indicates that the applicant last entered the United States on September 23, 1981; lists her address for the pertinent period as [REDACTED], Van Nuys, California from September 1981 to March 1992; indicates the applicant returned to the Mexico on October 8, 1987 for a family emergency and returned to the United States on November 5, 1987; and lists the applicant's employers during the pertinent time period as Raymonds Co in Pacoima, California from September 1981 to September 1987 and as Hazeltine Palms in Van Nuys, California from December 1987 to January 1990.

The record also includes the following affidavits:

- A September 12, 1990 affidavit signed by [REDACTED], resident manager of the Hazeltine Palms who certifies that the applicant has been employed at the Hazeltine Palms from December 1987 to the date of the affidavit.
- A letter dated August 21, 1987 on the letterhead of The Raymond Company in Pacoima, California wherein the letter writer states that the applicant was employed at the company from September 1981 to the date of the letter and that the company is closing due to financial problems; [REDACTED]
- A January 20, 1993 affidavit signed by [REDACTED] who declares that the applicant lived in the San Fernando Valley, California from September 1981 to the

date of the affidavit and that the affiant and the applicant were neighbors and also went to school together;

- A February 18, 1993 affidavit signed by [REDACTED] who declares that the applicant lived in the San Fernando Valley, California from September 1981 to the date of the affidavit and that the affiant and the applicant went to school together and were in the same class and had been neighbors since January 1982; and,
- A January 20, 1993 affidavit signed by [REDACTED] who declares that the applicant lived at [REDACTED] Van Nuys, California from September 1981 to March 1992 and that she was the applicant's landlord; a November 16, 2006 letter also signed by [REDACTED] who declares that she has known the applicant since 1981 when they met in Mexico, that the letter-writer arrived in the United States in December of 1981 and the applicant had already been in the United States some months, and that the applicant lived with the affiant and her family from 1981 to 1989, and that the applicant would clean her house until 1992.

The record also includes letters submitted on the applicant's behalf including:

- A letter dated March 13, 2006 signed by [REDACTED] who declares that she has known the applicant since 1987 because she lived with her at [REDACTED] in Van Nuys, California and that she and the applicant go to parties, social gatherings and family events and maintain a good friendship;
- A letter dated March 13, 2006 that indicates [REDACTED] is making the declaration, which is the same declaration above, but is signed by [REDACTED]; a second letter dated March 13, 2006 signed by [REDACTED] who declares that she has known the applicant since 1987 when the declarant started living on the same street as the applicant, and that the declarant and the applicant go to parties, social gatherings and family events and maintain a good friendship.
- A letter dated March 13, 2006 signed by [REDACTED] who declares that she knows the applicant has been living in the United States since 1982 and that she met the applicant through a mutual friend at a party and that she sees and visits the applicant often for family reunions and family parties;
- A March 12, 2006 letter signed by [REDACTED] who declares that she has known the applicant since October 1981 when the applicant was living at [REDACTED] in Van Nuys, California and who declares that she used to pick up her friend who lived at the same address;
- A March 12, 2006 letter signed by [REDACTED] who declares that he has known the applicant since 1982 when the applicant lived at [REDACTED] in Van Nuys, California and who declares that his girlfriend, now wife, [REDACTED] had a friend who lived at the same address as the applicant and that he and Ms. [REDACTED] would pick up the friend at that address;
- An August 23, 2006 letter signed by [REDACTED] who declares that he has known the applicant since 1981 when she came to live at his house, that his mother

and aunt were good friends with the applicant, and that the applicant lived at [REDACTED] in Van Nuys for many years;

An August 31, 2006 letter signed by [REDACTED] who declares that he knows the applicant has lived in the United States since 1987 as the applicant is a friend of his girlfriend's family and that he has maintained a friendship with the applicant;

- An April 22, 2006 letter signed by [REDACTED] who declares that he has known the applicant since 1985 when she worked for him at [REDACTED] in Van Nuys, California until 1990;
- An April 22, 2006 letter signed by [REDACTED] who declares that she has known the applicant since 1985 when the applicant worked for her at [REDACTED] in Van Nuys, California until 1990;
- An October 22, 2006 letter signed by [REDACTED] who declares that she has known the applicant since 1985 when the applicant worked for a family friend and that friend's daughter and that the applicant came to work for her in 1996.

On December 6, 2006, the director determined that the applicant had provided affidavits in support of her application from affiants that predominantly state that they had met the applicant after 1982. The director determined that the evidence submitted did not establish by a preponderance of evidence that the applicant had entered the United States prior to January 1, 1982 and continuously resided in the United States through May 4, 1988.

On appeal, the applicant states that she has lived in the United States since 1981 and resubmits documents previously provided.

The AAO has reviewed the record in this matter and finds that the applicant has not established her continuous residence in the United States for the applicable time period. The affidavits provided are general in nature and do not supply the necessary detail to establish the applicant's actual entry into the United States and continuous residence for the requisite time period. For example, the January 20, 1993 affidavit signed by [REDACTED] and the February 18, 1993 affidavit signed by [REDACTED] indicate that the applicant and the affiants went to school together; however, the applicant has not identified the school nor offered corroborating detail that she attended the school during the requisite time period. In addition, the letters from [REDACTED], [REDACTED], and [REDACTED] all lack specific information regarding the circumstances and events of interactions between the declarants and the applicant. These documents are general in nature and lack sufficient indicia to establish the reliability of their assertions.

The record also contains affidavits and letters that are inherently inconsistent. For example, the January 20, 1993 affidavit signed by [REDACTED] indicates that the applicant lived at [REDACTED] Van Nuys, California from September 1981 and that the affiant was the applicant's landlord; but in Ms. [REDACTED] letter dated November 16, 2006, [REDACTED] indicates that she did not arrive in the United States until December of 1981. Similarly, one of the letters signed by [REDACTED] indicates that the declarant lived at the same address as the applicant and a second letter signed by [REDACTED] indicates that the declarant lived on the same street as the applicant. Further, all the affidavits/letters

submitted refer to the applicant living at [REDACTED] in Van Nuys, California while the previously submitted Form I-687 that was not filed but submitted along with an application for class membership lists the applicant's address from September 1981 to March 1992 as [REDACTED], Van Nuys, California. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The record also contains letters and an affidavit regarding the applicant's employment during the requisite time period. However, neither the affidavit signed by [REDACTED], resident manager of the Hazeltine Palms, the letters signed by an individual on behalf of The Raymond Company, or the letters signed by [REDACTED] and [REDACTED] provide the necessary information required of employers as noted at the regulation at 8 C.F.R. § 245a.2(d)(3)(i). The applicant's inability to obtain authentic letters of employment and to provide detail regarding the employment in her interview or on the Form I-687 that is the subject of this appeal seriously detracts from the credibility of her claim of continuous unlawful residence beginning prior to January 1, 1982 and continuing for the requisite time period.

The AAO has reviewed the entire record in this matter and does not find that the applicant has established her continuous residence for the applicable time period. 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. The deficient affidavits and statements, the unsubstantiated information in the letters submitted, and the applicant's statement comprise the only documentation of the applicant's residence in the United States from prior to January 1, 1982 through the requisite time period. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period detracts from the credibility of her claim. Given the inconsistencies in the record and the lack of credible supporting documentation, it is concluded that the applicant has failed to meet her burden of proof and 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. The appeal will be dismissed.

**ORDER:** The appeal is dismissed. This decision constitutes a final notice of ineligibility.