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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
MSC-05-232-13087

Office: LOS ANGELES

Date: JUL 25 2008

IN RE: Applicant: [REDACTED]

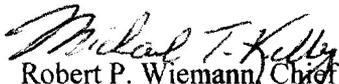
APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the
Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

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.

for 
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 20, 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 record of proceeding contained several discrepancies. 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 statement. In her statement, the applicant stated that during her interview, she “was very nervous and scared” because this application will determine her future in the United States. With regards to the discrepancies noted by the director, the applicant states that she believes that there is a “misunderstanding.” As of this date, the AAO has not received any additional evidence from 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 20, 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] California, from February 1980 to March 1984. At part #33, she listed her first employment in the United States as housekeeping for [REDACTED] View California, from February 1980 to October 1985. At part #32, the applicant initially stated “none” with regards to absences from the United States. The AAO notes that part #32 includes a visit to Mexico from February 1987 to March 1987 written in red ink and assumes that the change was made during the applicant’s interview.

The applicant has provided several declarations; a copy of the applicant’s birth certificate; a copy of the applicant’s California identification card issued on December 7, 1999; a copy of the applicant’s California identification card issued on June 22, 1989; copies of Internal Revenue Service (IRS) 1996 – 2003 Forms W-2 and 1040A; copies of receipts dated 1993 and 1999; and an appointment card for [REDACTED] Family Planning with appointments in November 1990, December 1990, and October 1991. The applicant’s birth certificate, California identification cards, and employment authorization 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. Some of the evidence submitted indicates that the applicant resided in the United States after the relevant time period. The following evidence relates to the requisite period:

- An unnotarized declaration from [REDACTED] dated April 28, 2005. The declarant states that she has personally known that the applicant has been living in the United States since prior to 1986. Although the declarant states that she has known the applicant in the United States since prior to 1986, the statement does not supply enough details to lend credibility to an at least 19-year relationship with the applicant. For instance, the declarant does not indicate how she met the applicant, how she dates her initial acquaintance with the applicant, or how often she had contact with the applicant. Further, [REDACTED] does not provide details to demonstrate the extent of her contacts with the applicant during the period referenced in the statement. Given these deficiencies, this statement has minimal probative value in supporting the applicant’s claims that she entered the United States in 1981 and resided in the United States for the entire requisite period.
- An unnotarized declaration from [REDACTED] dated April 28, 2005. The declarant states that she has personally known that the applicant has been living in the United States since prior to 1988. The declarant states that the applicant has been a “worker of [hers from] 1988 to the present time.” The declarant adds that the applicant “takes care of [the declarant’s] mother.” Although the declarant states that she has known the applicant in the United States since prior to 1988, the statement does not supply enough details to lend credibility to an at least 17-year relationship with the applicant. The declarant does not indicate how she met the applicant, how she dates her initial acquaintance with the applicant, or how often she had contact with the applicant. Further, [REDACTED] does not provide details that corroborate the asserted 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 1981 and resided in the United States for the entire requisite period.

- An unnotarized declaration from [REDACTED] dated April 28, 2005. The declarant states that she has personally known that the applicant has been living in the United States since prior to 1988. The declarant also states that the applicant is “a very good friend” of hers. Although the declarant states that she has known the applicant in the United States since prior to 1988, the statement does not supply enough details to lend credibility to an at least 17-year relationship with the applicant. The declarant does not indicate how she met the applicant, how she dates her initial acquaintance with the applicant, or how often she had contact with the applicant. Nor does she provide details that would demonstrate the extent of her 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 1981 and resided in the United States for the entire requisite period.
- An unnotarized declaration from [REDACTED] dated April 28, 2005. The declarant states that he personally knows that the applicant first arrived “in February 1980.” The declarant states that the applicant is his sister and that when she first arrived in the United States, “she came in contact” with the declarant so that he could help her find a job. The declarant also states that the applicant “would help [him] with [his] house chores because [his] wife was sick.” Although the declarant states that the applicant is his sister and that he has known the applicant in the United States since February 1980, the statement does not supply enough details to lend credibility to an at least 25-year relationship with the applicant in the United States. For instance, the declarant does not indicate how he dates his initial acquaintance with the applicant in the United States or how often he had contact with the applicant. This statement exhibits the same lack of corroborative detail as those previously discussed. Given these deficiencies, this statement has minimal probative value in supporting the applicant's claims that she entered the United States in 1981 and resided in the United States for the entire requisite period.
- An unnotarized declaration from [REDACTED] dated April 28, 2005. The declarant states that she has personally known that the applicant has been living in the United States since prior to 1985. The declarant states that the applicant “has been [her] friend for several years.” The declarant also states that in 1988, the applicant “helped [her] take care of [her] children” and “that same year, [the applicant] left to work with [REDACTED].” The declarant adds that they have never stopped communicating and that she still sees the applicant “very often.” Although the declarant states that she has known the applicant in the United States since prior to 1985, the statement does not supply enough details to lend credibility to an at least 20-year relationship with the applicant. For instance, the declarant does not indicate how she met

the applicant, how she dates her initial acquaintance with the applicant, or how often 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 1981 and resided in the United States for the entire requisite period.

The remaining evidence in the record is comprised of the applicant's statements and application forms, in which she claims to have entered the United States in 1980 without inspection accompanied by her brother. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). As noted above, to meet his 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 January 31, 2006. The director denied the application for temporary residence on December 19, 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 and that she met the necessary residency or continuous physical presence requirements. In the both the NOID and in her decision, the director noted that the record of proceeding contained several discrepancies including the dates that the applicant worked for [REDACTED] the addresses that the applicant stated during the interview, and whether the applicant's brother entered the United States with her. 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 during her interview, she "was very nervous and scared" because this application will determine her future in the United States. With regards to the discrepancies noted by the director, the applicant states that she believes that there is a "misunderstanding." The applicant states that she stated that she worked for [REDACTED] beginning in 1985 but it was not until 1988 that she "became a stable babysitter" for Ms. [REDACTED]'s children. The applicant adds that from 1985 to 1988 she worked "on and off" as a babysitter for [REDACTED]. In addition, the applicant states that what she tried to say during the interview was that she "came to the United States to stay with [her] brother" and that as he said in his declaration, her brother helped her obtain a job. The AAO notes that in a sworn statement dated January 31, 2006, the applicant wrote that when she first traveled to the United States, she came "accompanied by her brother [REDACTED]." The applicant states the same in a declaration dated April 28, 2005. 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 visa petition. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). On appeal, the applicant does not respond to the director's concerns with regards to her address from 1980 to 1984 or submit any 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 he entered the United States in 1981. Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that she is eligible for the benefit sought.

In this case, the absence of sufficient credible and probative evidence 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.