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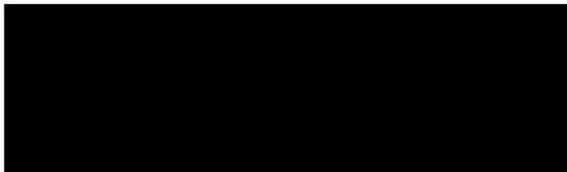
U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] MSC-05-238-31446

Office: LOS ANGELES

Date: JUN 17 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, 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. 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, the director stated that at the time of her interview with a Citizenship and Immigration Services (CIS) officer, the applicant testified that her first and only absence from the United States occurred in September 1987. However, she also stated during that interview that she gave birth to twins on July 8, 1987 in Mexico. The director went on to cite other inconsistencies between information in affidavits submitted by the applicant and testimony she gave during her interview with a CIS officer on August 28, 2005. The director stated that the testimony given by the applicant at the time of her interview when combined with other evidence in the record did not allow her to meet her burden of proving by a preponderance of the evidence that she resided continuously in the United States for the duration of the requisite period. Because the director found the applicant had not met her burden of proof, she found the applicant was not eligible to adjust to Temporary Resident Status pursuant to the terms of the CSS/Newman Settlement Agreements. Therefore, the director denied the application.

On appeal, the applicant submits a brief in which she states that she was nervous at the time of her interview, which caused her to confuse dates. She submits new and previously submitted affidavits and documents 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 May 27, 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 addresses in the United States during the requisite period to be: [REDACTED] in Ventura, California from June 1981 to November 1985; [REDACTED] in Ventura from November 1985 until January 1987; and [REDACTED]

[REDACTED], in Arleta, California from January 1987 to January 1989. On part #32 where the applicant was asked to list all of her absences from the United States since January 1, 1982, she showed that she only had one absence, from September 1987 to October 1987 when she went to Mexico to visit her family. At part #33, where the applicant was asked to list all of her employment in the United States since she first entered, she showed that during the requisite period she was employed as a housekeeper from July 1981 to May 1989. Here, she indicated that she was self-employed.

Also in the record is a Form I-485 received by CIS on June 6, 2003. Here, the applicant showed that she gave birth to twin sons on July 8, 1987 in Mexico. It is noted here that this is not consistent with what the applicant showed on her Form I-687, where she indicated that her first and only absence from the United States was from September to October 1987. This inconsistency casts doubt on whether the applicant has fully disclosed her absences from the United States during the requisite period to CIS.

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. 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. 582, 591-92 (BIA 1988).

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 or her 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 initially submitted the following evidence as proof that she resided in the United States for the requisite period:

1. A declaration from [REDACTED] that is dated July 2, 2003. The declarant submitted photocopies of her California Identification Card issued on March 20, 1993; her California Driver License issued on May 26, 1995; and her California Driver License issued on September 4, 1998. The declarant indicates she is the applicant's sister and states that she and the applicant resided together in the same house in the United States and shared

everyday activities. However, she failed to indicate when she resided with the applicant or whether it was during the requisite period. She further states that she and the applicant have worked together since "1888 [sic.]" The declarant fails to indicate the frequency with which she saw the applicant during the requisite period or whether there were periods of time during the requisite period when she did not see the applicant. Because this declaration is significantly lacking in detail, it can be accorded minimal weight as proof that the applicant resided in the United States during the requisite period.

2. A declaration from [REDACTED] that is dated June 28, 2003. The declarant submits her Permanent Resident Card issued November 18, 1989 and her California Driver License issued July 29, 1998 as well as a Social Security Statement showing earnings from 1986 to 2002 with her declaration. The declarant indicates she has known the applicant since 1984 and that she met her through a mutual friend at a park. She states that since meeting the applicant she has spoken to the applicant regularly by telephone. Though she indicates that she and the applicant were neighbors, she fails to indicate when she and the applicant were neighbors, whether they were neighbors during the requisite period or whether they were neighbors in the United States. She further fails to indicate the frequency with which she saw the applicant during the requisite period or whether there were periods of time during the requisite period when she did not see the applicant. Because this declaration is significantly lacking in detail, it can be accorded minimal weight as proof that the applicant resided in the United States during the requisite period.
3. Affidavits from [REDACTED], and [REDACTED]. These affidavits were notarized on June 28, 1993, June 29, 1993 and June 29, 1993 respectively. They indicate the affiants personally know that the applicant resided in the United States from June 1981 until June 1993 and state that the affiants were friends with the applicant. It is noted that one affiant, [REDACTED], is the applicant's sister. These affidavits fail to indicate the frequency with which they saw the applicant during the requisite period or whether there were periods of time during the requisite period when they did not see the applicant. Because these affidavits are significantly lacking in detail, they can be accorded minimal weight as proof that the applicant resided in the United States during the requisite period.
4. A declaration from [REDACTED] that is dated June 25, 2003. The declarant submits a photocopy of his California Driver License issued July 3, 2001 and a photocopy of a page of his passport showing he was issued a United States passport on December 12, 2000 with his declaration. He further submits a photocopy of a partial Form 1040 from 1985 and a photocopy of a 1985 Form W-2 issued to him in the United States. The declarant states he has known the applicant since 1985. He states he met the applicant through a mutual friend at a wedding. He states that she is now his neighbor. Though the declarant states he has known the applicant since 1985 he fails to indicate whether he met her in the United States. He further fails to indicate the frequency with which he saw the applicant during the requisite period or whether there were periods of time during the requisite period when he

did not see the applicant. Because this declaration is significantly lacking in detail, it can be accorded minimal weight as proof that the applicant resided in the United States during the requisite period.

5. A California Identification Card issued to the applicant on May 22, 1986. This card indicates the applicant resided in Ventura, California when the card was issued.
6. A declaration from [REDACTED] that is dated June 12, 1993. This declaration indicates that the applicant was employed as a housekeeper from July 1981 to November 1985. The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states, in pertinent part: that letters from employers should be on the employer letterhead stationary, if the employer has such stationary and must include the following: an applicant's address at the time of employment; the exact period of employment; periods of layoff; duties with the company; whether or not the information was taken from the official company records; and where records are located and whether the Service may have access to the records. The regulation further provides that if such records are unavailable, an affidavit form-letter stating that the alien's employment records are unavailable and noting why such records are unavailable may be accepted in lieu of statements regarding whether the information was taken from the official company records and an explanation of where the records are located and whether USCIS may have access to those records. This affidavit form-letter 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. In this case, the employer has failed to provide information regarding periods of unemployment or information regarding how the employer was able to verify the applicant's exact dates of employment. Because this employment declaration is lacking with regards to the criteria in the regulation at 8 C.F.R. § 245a.2(d)(3)(i) it can be accorded minimal weight as proof that the applicant resided continuously in the United States for the duration of the requisite period.
7. An employment letter from [REDACTED] that is dated June 14, 1993. This declaration indicates that the applicant was employed as a housekeeper from July 1981 to November 1985. The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states, in pertinent part: that letters from employers should be on the employer letterhead stationary, if the employer has such stationary and must include the following: an applicant's address at the time of employment; the exact period of employment; periods of layoff; duties with the company; whether or not the information was taken from the official company records; and where records are located and whether the Service may have access to the records. The regulation further provides that if such records are unavailable, an affidavit form-letter stating that the alien's employment records are unavailable and noting why such records are unavailable may be accepted in lieu of statements regarding whether the information was taken from the official company records and an explanation of where the records are located and whether USCIS may have access to those records. This affidavit form-letter 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. In this case, the employer has failed to provide

information regarding periods of unemployment or information regarding how the employer was able to verify the applicant's exact dates of employment. Because this employment declaration is lacking with regards to the criteria in the regulation at 8 C.F.R. § 245a.2(d)(3)(i) it can be accorded minimal weight as proof that the applicant resided continuously in the United States for the duration of the requisite period.

8. A declaration from [REDACTED] that is dated June 29, 2003. She submits a photocopy of her California Driver License with her declaration. This declarant states that she met the applicant in 1983 in Ventura, California. She goes on to say that she spent time together with the applicant and that the applicant baptized one of her children. Though this declarant states that she is good friends with the applicant and that they spent time together, she does not indicate the frequency with which she saw the applicant during the requisite period. She fails to state whether there were periods of time during the requisite period when she did not see the applicant. Because these affidavits are significantly lacking in detail, they can be accorded minimal weight as proof that the applicant resided in the United States during the requisite period.
9. A photocopy of a Certificate of Baptism that indicates that the applicant baptized [REDACTED] who is the son of [REDACTED] and [REDACTED] on June 23, 1986.
10. A marriage certificate showing that [REDACTED] and [REDACTED] who resided in Ventura, California were married in October 1985 in the United States.
11. A photocopy of a copy of a Petition for Alien Relative filed by [REDACTED] for [REDACTED] z. This petition indicates that [REDACTED] was granted Amnesty during the original filing period and that he and [REDACTED] resided in Ventura.
12. An unsigned declaration that indicates it is from [REDACTED]. This declaration is dated July 2, 2003. The declarant states she has known the applicant all of her life and that she met the applicant in 1982 at a park. She states she sees that applicant at reunions and that they frequently visit and talk on the telephone. The declarant fails to indicate the frequency with which she saw the applicant during the requisite period or whether there were periods of time during the requisite period when she did not see the applicant. Because it is significantly lacking in detail and because this declaration is not signed, it carries no weight as evidence that the applicant resided in the United States during the requisite period.
13. A declaration from [REDACTED] that is dated June 26, 2003. The declarant submitted a photocopy of her California Identification card with her declaration. The declarant states that she has known the applicant since 1983 and that they met through a friend at a barbeque. She does not, however, indicate whether this barbeque was in the United States. She states that she became friends with the applicant and that they visited each other and telephoned each other regularly. She goes on to say that the applicant babysat her children

occasionally. Though the declarant states that she has seen the applicant regularly, she does not specify the frequency with which she saw the applicant during the requisite period. She further fails to state whether there were periods of time during the requisite period when she did not see the applicant. Because this declaration is significantly lacking in detail, it can be accorded minimal weight as proof that the applicant resided in the United States during the requisite period.

14. A declaration from [REDACTED] that is dated June 25, 2003. He submits photocopies of his California identification card issued to him on March 16, 1979, his California Driver License issued to him on October 20, 2000 and his Permanent Resident Card. He further submits a photocopy of his 1981 Income Tax Forms 1040A and 540A and his 1981 Form W-2 Wage and Tax Statement. The declarant states he has known the applicant since 1981 and that they met at a barbeque. He states he both visited the applicant and spoke with her on the telephone on a regular basis since that time. He states the applicant cleaned his house occasionally. He states that the applicant and he are still good friends. Though the declarant states he visited with the applicant and spoke with her regularly, he does not indicate the frequency with which he saw the applicant during the requisite period. He further fails to specify whether there were periods of time during the requisite period when he did not see the applicant. Because this declaration is significantly lacking in detail, it can be accorded minimal weight as proof that the applicant resided in the United States during the requisite period.
15. A declaration from [REDACTED] that is dated June 26, 2003. The declarant submits a photocopy of his California Driver License issued to him in 1998 and a photocopy of his Permanent Resident Card. He further submits proof that he was scheduled for an interview for legalization during the original filing period. The declarant states he has known the applicant since 1981. He states he met the applicant at a restaurant. He goes on to say that he is now close friends with the applicant and that they occasionally visit each other, talk on the telephone and eat meals with each other. Though the declarant states he is now friends with the applicant, he does not indicate the frequency with which he saw the applicant during the requisite period. He further fails to specify whether there were periods of time during the requisite period when he did not see the applicant. Because this declaration is significantly lacking in detail, it can be accorded minimal weight as proof that the applicant resided in the United States during the requisite period.
16. A declaration from [REDACTED] that is dated June 26, 2003. The declarant submits photocopies of both a California Driver License issued to him in August 1975 and a California Driver License issued to him in December 1998. He further submits a photocopy of a Social Security Statement issued to him. It is noted that while this statement shows years, there are no earnings amounts for any years shown on the copy submitted. The declarant further submits photocopies of checks showing his name that were issued during the requisite period. The declarant states the applicant is his niece. He states that he visited the applicant and spoke on the telephone with her regularly. He failed to indicate whether

he did this in the United States or elsewhere. He goes on to say that in 1982 he asked the applicant to baby-sit his daughter. He states that she agreed to do so. Though he states that he speaks to the applicant and visits her he does not indicate the frequency with which he saw the applicant during the requisite period. He further fails to specify whether there were periods of time during the requisite period when he did not see the applicant. Because this declaration is significantly lacking in detail, it can be accorded minimal weight as proof that the applicant resided in the United States during the requisite period.

The director issued her decision on September 7, 2006. In her decision she stated that the applicant did not submit sufficient evidence to meet her burden of establishing that she resided continuously in the United States for the duration of the requisite period. In saying this, the director referred to testimony given at the time of the applicant's interview with a CIS officer pursuant to her Form I-687 application. Here, the record shows the applicant first testified that she only had one absence from the United States from September to October in 1987. However, the record shows that the applicant also testified that she had twin children born in Mexico on July 8, 1987 during that interview. The director noted that at the time of the applicant's interview with a CIS officer she stated she did not meet declarant [REDACTED] until 1987. This is significant because the record contains an employment letter from [REDACTED] that states that he employed the applicant from July 1981 until November 1985. The director also noted that many of the declarations submitted by the applicant were not notarized and that the documents she submitted failed to provide sufficiently detailed information regarding her residency in the United States to allow her to meet her burden of proof.

On appeal, the applicant resubmits previously submitted declarations and submits new documents in support of her application. Details of the newly submitted documents that are relevant to the requisite period are as follows:

- A declaration from [REDACTED] that is dated September 20, 2006. The declarant submits his California Driver License issued to him in 1998 and his Resident Alien Card with his declaration. He also submits his Social Security Earnings Statement showing earnings from 1979 to 1999. It is noted that there are no earnings shown for the year 1981. The declarant states he has known the applicant since 1984. He states he met the applicant through a friend and that she visited his family often. However, he does not indicate the frequency with which he saw the applicant during the requisite period. He does not state whether there were periods of time during the requisite period when he did not see the applicant. Because of its significant lack of detail, this declaration can only be accorded minimal weight as proof that the applicant continuously resided in the United States for the duration of the requisite period.
- A birth certificate showing [REDACTED] was born to [REDACTED]s and [REDACTED] on September 8, 1983.

- A signed declaration from [REDACTED] that is dated July 2, 2003. This declaration was submitted with a photocopy of the Social Security Earnings Statement for [REDACTED] which shows earnings from 1985 to 2005. This declaration contains the same testimony as the previous declaration from this declarant.
- A declaration from [REDACTED] that is dated September 19, 2006. He submits a photocopy of his Social Security Statement which indicates he has been employed in the United States from 1973 to 2004. The declarant states he knows the applicant has been present in the United States since 1982. He states he was introduced to the applicant through his wife [REDACTED]. He states that they are friends. However, he fails to indicate the frequency with which he saw the applicant during the requisite period. Similarly, he fails to state whether there were periods of time during the requisite period when he did not see the applicant. Because this declaration is significantly lacking in detail, it can only be accorded minimal weight as evidence that the applicant resided continuously in the United States for the duration of the requisite period.
- The applicant further submits a declaration that she wrote that is dated September 22, 2006. In this declaration, the applicant asserts she did arrive in the United States in 1981. She states that because she was nervous, she confused dates during her interview. She states that she did attempt to apply for legalization during the original filing period, but that she was turned away because she had traveled outside the United States in 1987.

The AAO finds the applicant has provided numerous declarations from family members and friends. However, none of the declarants from whom she submitted testimony indicate the frequency with which they saw the applicant during the requisite period. Similarly, they fail to state whether there were periods of time during the requisite period when they did not see the applicant. There are also inconsistencies in the record regarding the applicant's employment and absences from the United States. She has provided an employment letter from [REDACTED] that states that she worked for him from 1981 until 1985 but testified that she did not meet him until 1987. Further, though the applicant states in her appeal that she was nervous at the time of her interview which caused her to confuse dates, she showed on her Form I-687 that she only had one absence from the United States since her first entry which was from September to October in 1987. As previously noted, the applicant's Form I-485 shows that she gave birth to twins in Mexico in June 1987. This indicates the applicant had at least one absence from the United States that she did not list on her Form I-687. The applicant's explanation that she was nervous at the time of her interview does not account for this inconsistency. This indicates that the applicant has not completely represented her absences from the United States during the requisite period to CIS. Therefore, doubt is cast on whether the applicant maintained continuous residence during that period. Though the applicant submitted additional declarations and documents in support of her application with her appeal, these documents, when considered with other evidence in the record, are not sufficient to allow the applicant to meet her burden of proof.

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 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.