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[REDACTED]

FILE: [REDACTED]
MSC 06 081 10964

Office: LOS ANGELES

Date: JUN 20 2001

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:

[REDACTED]

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, and 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 noted that information provided by the applicant at her interview with a Citizenship and Immigration Services (CIS) officer indicates that she did not commence her residence in the United States until years after the statutory period had commenced. Additionally, the director found 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. Although the director also denied the application, in part, based on the determination that the applicant failed to establish class membership, the fact that the application was adjudicated suggests that the applicant was treated as a class member, despite any adverse findings. As such, the AAO's decision will focus strictly on the applicant's eligibility for temporary resident status.

On appeal, counsel for the applicant asserts that the director erred in his finding that the applicant's oral statements and information she provided in her application were inconsistent. Counsel asserts that the applicant provided oral testimony to the best of her recollection.

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 until the date of filing the application. 8 C.F.R. § 245a.2(b)(1).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the alien 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.* 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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that she resided in the United States during the requisite time period. In the present matter, 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 December 20, 2005. In support of her application, the applicant provided two affidavits attesting to her residence. The first affidavit, dated **October 7, 2005, is from** [REDACTED], who claimed that he is the applicant's uncle and further stated that the applicant and her parents lived in his guest house from March 23, 1985 to April 24, 1985 and that the applicant attended an elementary school on Sharp Avenue. This affiant provided no information as to the applicant's residence prior to March 23, 1985, nor did he affirmatively state that the applicant lived in the United States prior to the date she purportedly commenced residing at his guest house. Additionally, the information provided by this affiant suggests that the applicant resided somewhere other than his guest house prior to March 23, 1985 and subsequent to April 24, 1985. However, the information provided by the applicant in No. 30 of her Form I-687 with regard to her residential history in the United States indicates that the applicant resided at [REDACTED], Arleta, California from 1981 until 1988. As such, the affiant's statements are inconsistent with the applicant's Form I-687. 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 other affidavit provided by the applicant in support of her claimed residence is dated October 4, 2005 and was signed by [REDACTED] who claimed that she employed the applicant's mother as a housekeeper. The affiant stated that she became acquainted with the applicant when her mother brought the applicant to the affiant's house in June 1984 after the applicant's school year ended. It is noted that this affiant did not state that she had any personal knowledge of the applicant's residential history in the United States prior to June 1984, nor did she specifically establish that she was aware of the applicant's residence in the United States for the remainder of the statutory period. As such, this affidavit will be afforded minimal weight as corroborating evidence.

The record also contains an undated Form I-687 that was submitted previously. In support of that application, the applicant provided an affidavit dated April 18, 1996 from [REDACTED], who claimed that she has had personal knowledge of the applicant's residence in the United States since September 1981 and claimed that she was also aware of the applicant's one-month departure from the United States in June 1987. Although the affiant claimed to be the applicant's employer and family friend, she provided no information, aside for the date of the applicant's purported absence, with regard to the events and circumstances of the applicant's residence in the United States during the statutorily relevant time period. As such, this affiant's statement will only be afforded minimal evidentiary weight in this proceeding.

Additionally, the information provided by the applicant in her earlier Form I-687 is inconsistent with information provided in the Form I-687 that is the subject of this decision. Specifically, with regard to the applicant's residential history in the United States, in her earlier application, the applicant claimed that she resided on [REDACTED], Panorama, California from 1981 to 1982; [REDACTED], Arleta, California from 1982 to 1983; and at [REDACTED] 1, Panorama, California from 1983 through the time of filing. However, in the more recent application, the applicant claimed that she resided at [REDACTED], Arleta, California during the entire statutory period. The applicant also provided inconsistent information with regard to her alleged absence from the United States. In the earlier application, she claimed that she departed from and returned to the United States in June 1987. In the more recent application, the applicant indicated that her single absence from the United States took place in January 1986. In light of the significant discrepancies between the two applications, the applicant's credibility and consequently the validity of her claim come into question.

The record also contains a Form I-817, Application for Family Unity Benefits, which the applicant filed on September 30, 2002. It is noted that in Part 3, No. 1(b) of the application, the applicant stated that her continuous residence in the United States commenced in March 1988. The applicant submitted a letter dated September 25, 2002 from [REDACTED], the applicant's father, who reiterated the date of the applicant's U.S. residence. Also submitted with the Form I-817 application is a record for the Los Angeles Unified School District addressing the applicant's history of school attendance. With regard to the statutory period, the school record states that the applicant attended public school in Guadalajara, Mexico during grades K-4 and further shows that the applicant attended school in the United States for a one-month period from March 26 until April 23, 1985.

Lastly, the record shows that the applicant provided a sworn statement at her CIS interview on June 6, 2006 stating that she first came to the United States in 1979 without inspection, left for Mexico at an

unstated time such that she was in Mexico in 1981, and then returned to the United States in either 1982 or 1983.

On October 3, 2006, the director denied the application, citing the discrepancies between the Form I-817 above and the oral testimony provided by the applicant at her interview regarding when her residence in the United States actually commenced. The director determined that the applicant's testimony cannot be deemed credible and denied the application.

On appeal, counsel asserts that the director abused her discretion and erred in finding that there were discrepancies between the applicant's oral testimony and her application. Counsel explains that the applicant provided information to the best of her knowledge. However, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Moreover, as noted above, the record contains contemporaneous documentation, in the form of school records, that directly contradicts the applicant's claim of continuous residence in the United States during the statutory period. Merely claiming that the applicant provided testimony to the best of her ability is simply insufficient in light of documentation that directly contradicts the applicant's claim.

In summary, the only contemporaneous evidence of the applicant's residence in the United States during the statutory period establishes that the applicant was not residing in the United States when the statutory period commenced. Furthermore, information provided by the applicant and the supporting statement of her father only further demonstrate that, as the director determined, the claim made by the applicant in her Forms I-687 regarding her unlawful residence in the United States during the statutory period lacks credibility. Although the applicant provided some affidavits in support of her claim, these documents lack probative value and do not establish the applicant's residence in the United States as claimed.

The absence of credible and probative supporting 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 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 contradictory statements on her applications and her reliance upon documents with minimal probative value, 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-*, 20 I&N Dec. 77. 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.