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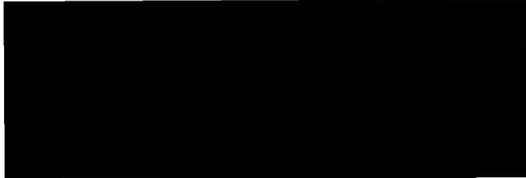
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
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Services

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FILE: [REDACTED]
MSC-06-088-11224

Office: LOS ANGELES

Date: **MAR 05 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:



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.

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. 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 provided additional evidence of her claim of eligibility as requested by the director. She resubmits copies of [REDACTED] **attestation, annual social security statement, California Driver's License, and United States passport** as evidence.

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. *See* CSS Settlement Agreement paragraph 11 at page 6 and 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 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 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 Supplement to Citizenship and Immigration Services (CIS) on December 27, 2005. At part #3 of the Form I-687 application the applicant indicated that she was born on October 6, 1981. The record also contains a copy of the applicant's Pakistani passport that also lists her date of birth as October 6, 1981. The applicant stated under oath and under penalty of perjury during her interview with Citizenship and Immigration Services (CIS) that she came to the United States when she was three months old. Hence, the applicant, based upon her sworn statement, arrived in the United States subsequent to January 1, 1982.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted a letter dated April 15, 2007 from [REDACTED]. The applicant also submitted copies of the declarant's annual social security statement, California Driver's License, and United States passport. The declarant stated in the letter that he knows the applicant to have continuously resided in the United States from March of 1981 through April of 1989, and that she was of good moral character. This information is inconsistent with the information provided by the applicant on her Form I-687 application, where she lists her date of birth as October 6, 1981. In this instance, the declarant is claiming that the applicant resided in the United States prior to her birth. This inconsistency calls into question the declarant's ability to confirm that the applicant resided in the United States during the requisite period. Because this affidavit contains testimony that conflicts with what the applicant showed on her Form I-687, doubt is cast on assertions made in the declaration. Doubt cast on any aspect of the petitioner'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 petitioner to resolve any inconsistencies

in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). Because the declaration lacks detail and because it directly conflicts with other evidence in the record, namely the applicant's date of birth, it cannot be afforded any weight in establishing that the applicant resided in the United States throughout the requisite period.

The applicant also submitted declarations from [REDACTED] and [REDACTED] all dated December 13, 2005. Here, the declarations are all written on duplicate fill-in-the-blank forms in which each declarant states that he/she is aware of the applicant residing continuously in the United States from December 3, 1981 through May 4, 1988. Each declarant also attests to the applicant's good moral character. This information is inconsistent with the information provided by the applicant during her interview with CIS in which she stated under oath and under penalty of perjury that she came to the United States when she was 3 months old. Though not required to do so, the declarants have not included proof of their identity with their declarations. The declarants fail to indicate any personal knowledge of the applicant's entry into the United States or of the circumstances of her residence. There is no evidence that the declarants resided in the United States during the requisite period, and no details of any relationship that would lend credibility to their statements.

For the reasons noted above, the documents submitted in support of the applicant's claim can only be afforded minimal weight as evidence of the applicant's residence and presence in the United States throughout the requisite period. All of the declarations are lacking sufficient detail to be found credible or probative, in that not one declarant indicates personal knowledge of the applicant's entry into the United States or how she lived and survived as an infant in the country.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States during the requisite period. She has admitted to not entering the country until she was 3 months old, but does not explain how she is able to recollect such detail. Although she claims to have been in the country since 1981, she has failed to provide school records or medical records to substantiate such claim, or a plausible explanation for why these documents were unavailable. The applicant has also failed to provide any evidence from or about any responsible adult to indicate the circumstances of her travel to the United States as an infant or how she survived in the country during her childhood and throughout the requisite period.

The absence of sufficiently detailed credible and probative documentation to corroborate the applicant's claim of continuous unlawful residence in the United States 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 lack of credible support documentation and the inconsistencies noted in the record, 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.