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[REDACTED]

FILE: MSC-05-224-10432

Office: LOS ANGELES

Date: **MAR 07 2008**

IN RE: Applicant:

[REDACTED]

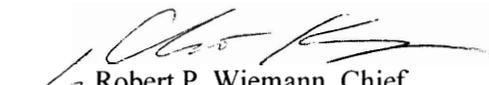
APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. 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 under Section 245A of the Act.

On appeal, the applicant asserts that she has resided in the United States since November 1981. The applicant further asserts that contrary to the director's decision, she never made an admission that she first entered the United States in 1986. The applicant maintains that under the preponderance of the evidence standard, she has furnished sufficient evidence to establish her residence in the United States during the requisite period.

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 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 May 12, 2005. The applicant signed her application under penalty of perjury, certifying that the information is true and correct. At part #30 of the application where applicants are asked to list all residences in the United States since first entry, the applicant reported her first address in the United States to be in Los Angeles, California from November 1981 until September 1997. At part #33 of the application, she reported her first employment in the United States to be for [REDACTED] as a babysitter in Los Angeles, California from November 1981 until December 1986. The applicant reported that she was then employed with [REDACTED] as a sewing machine operator in Los Angeles, California from January 1987 until April 1989. This information indicates that the applicant continuously resided in the United States during the requisite period; however the applicant has failed to corroborate this claim with reliable, credible and probative evidence.

The director issued a Notice of Intent to Deny (NOID) on February 6, 2006. The director determined, “during your interview on November 8, 1993 at the East Los Angeles legacy

Immigration and Naturalization Service (INS) office, you told [sic] swore under oath that the first time you entered the U.S. was in 1986. You signed a written statement in Spanish confirming this before two Immigration Officers.” The applicant’s rebuttal to the NOID provides that she is illiterate in English and Spanish. The applicant asserts that during her November 1993 interview she showed the immigration officer her California Identification Card and stated that it was issued in 1986. The applicant claims that she then signed a document without understanding its content.

In denying the application, the director reiterated that based on this inconsistent testimony, the applicant had not established continuous unlawful residence since prior to January 1, 1982. The director’s denial notice provides:

Your statement taken under oath on November 08, 1993 in front of the immigration officer was witnessed with another officer from the same office. The witness officer is fluent in Spanish and you were explained the question in Spanish. The question on the sworn statement is written in Spanish also. Because your statements in November 11, 1993 [sic], and in February 6, 2006 are contradicting [sic] to each other regarding your first entry to USA, therefore, you have not established continuous unlawful residence since prior to January 1, 1982 as required.

On appeal, the applicant again asserts that she is illiterate in English and Spanish. The applicant reiterates that during her interview she only testified that her California Identification Card was issued in 1986. The applicant maintains that she was forced to sign the sworn statement and was unaware of its content. The applicant asserts that she has provided sufficient evidence under the preponderance of the evidence standard to establish her residence in the United States during the requisite period.

The director based her decision solely on the applicant’s sworn statement regarding her entry into the United States in 1986. In an attempt to establish continuous residence in the United States, the applicant provided voluminous documentation. The director failed to take into consideration any of the documentary evidence on record. The director also failed to take into consideration the applicant’s explanation for signing the sworn statement. The AAO will not consider the issue of the applicant’s November 8, 1993 sworn statement in conducting its de novo review of the record. This proceeding will instead focus on documentation in the applicant’s record that serves to corroborate her residence in the United States during the requisite time period.

The applicant submitted several affidavits and letters to corroborate her residence in the United States during the requisite period. In determining the weight of a affidavit, it should be examined first to determine upon what basis the author is making the statement and whether the statement is internally consistent, plausible, or even credible. *Matter of E-M-*, 20 I&N Dec. at 81.

The applicant submitted an affidavit from [REDACTED] dated June 15, 1993, which provides that the applicant is his neighbor. The affiant states, "I have known [REDACTED], [s]ince I began to live in this neighborhood [in] November 1981. I gave [REDACTED] a ride to Tijuana, when she went to see her father in Mexico, because he was very sick. I gave her a ride on 10/8/87, and picked her at the Bus Station in Los Angeles on 10/24/87." This affidavit lacks significant detail on the affiant's contact with the applicant throughout the requisite period. The affiant's statement would have carried more weight had he provided documentation to corroborate his residential address as the applicant's neighbor.

The applicant submitted a letter from Our Lady Queen of Angels Church, located in Los Angeles, California. This letter is dated July 9, 1993 and is signed by [REDACTED] C.M.F., Pastor. The letter states, "[REDACTED] is presently residing at [REDACTED] Los Angeles, California 90065. She has been attending services here since 1981 and helps contribute to the support of this church." The regulation at 8 C.F.R. § 245a.2(d)(3)(v) provides guidelines for attestations by organizations. These guidelines state, in part, that these attestations should establish the origin of the information being attested to. There is no indication in [REDACTED]'s letter that he has personal knowledge of the applicant's involvement since 1981 with Our Lady of Queen of Angels Church.

The applicant submitted a letter from [REDACTED] dated June 17, 1993, which provides that the applicant was continuously employed by her as a babysitter from November 1981 until December 1986. The regulation at 8 C.F.R. § 245a.2(d)(3)(i) provides guidelines on letters from past employers. These guidelines state, in part, that the employer letter must include the employee's duties. The letter from [REDACTED] fails to explain the applicant's duties as a babysitter or provide any other information regarding her employment.

The applicant submitted an affidavit, dated June 17, 1993, from [REDACTED], a self employed clothing vendor. This affidavit provides, "I have known [REDACTED] has been [sic] a customer of mine since December 1981. She has maintained a Credit account with me and has made timely payments since then." This affidavit fails to provide the name of the affiant's clothing business. It also fails to provide detailed information regarding the affiant's interaction with the applicant throughout the requisite period. The affiant's statement would have carried more weight had she provided a copy of the applicant's account statement.

The applicant submitted a fill-in-the-blank letter from [REDACTED], dated June 22, 1993, which states that he is the landlord of the applicant's residence. This letter provides, "[REDACTED] resided at [REDACTED] Los Angeles, CA 90065 from November/1981 to Present. During this time I was the Landlord for the above address, and I did collect monthly rents from him/her." [REDACTED] submitted with this letter his business card as the owner of the American Family Medical Group in Fountain Valley, California. While this letter provides some probative evidence of the applicant's residence during the requisite period, it would have carried more weight had the landlord provided copies of the applicant's rental agreements or account statements.

The applicant submitted a letter from [REDACTED], Credit Manager of [REDACTED], dated June 7, 1993. This letter is on [REDACTED]'s letterhead and states that the applicant has had a credit account with [REDACTED]'s since November 21, 1983. This letter provides the applicant's highest account balance and her account balance as of the date of the letter. However, this letter fails to provide any information on the applicant's purchases from [REDACTED] during the requisite period.

The applicant also furnished as corroborating evidence of her residence in the United States, copies of her 1986 California Identification Card with a receipt for the application fee; 1987 and 1988 W-2 Forms; and 1988 statements of earnings and deductions. While these documents are probative evidence of the applicant's residence in the United States from 1986 until 1988, they do not cover the applicant's residence in the United States throughout the *entire* requisite period.

Notably, the applicant's record contains original receipts and money order statements she initially submitted to the Immigration and Naturalization Service (the Service) in November 1993 to establish her class membership in either *Catholic Social Services, Inc. v. Thronburgh* or *League of United Latin American Citizens v. INS* pursuant to their settlement agreements. The dates on several of these documents have been altered. The applicant submitted two original receipts from [REDACTED] respectively dated July 27, 1982 and March 15, 1982. The dates on these receipts have been visibly altered to change the year from 1992 to 1982. The applicant also submitted an original receipt from the Santa Maria Medical Clinic, where the date has been visibly altered from 1-25-95 to 1-25-85.

Additionally, the applicant submitted to the Service original earnings and deductions statements from Eastward Fashion, respectively dated October 12, 1987 and October 19, 1987. The applicant's employment on these dates is inconsistent with part #32 of her Form I-687 application, which states that she traveled to Mexico between October 8, 1987 and October 24, 1987. **The dates on these earnings statements are also inconsistent with the affidavit from [REDACTED]** which provides that the affiant drove the applicant to Tijuana on October 8, 1987 and then picked her up at a bus station in Los Angeles on October 24, 1987.

Finally, the applicant has submitted with her instant application, copies of earnings and deductions statements from Eight Eight Fashion, Los Angeles, California, dated May 5, 1984 and June 2, 1984. Alterations on a copy of a document are more ambiguous than alterations on an original document. However, it is evident that number "4" on the copy of the earnings and deductions statement with the date June 2, 1984 has been visibly altered.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of his application. 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).

The applicant has not established her eligibility for temporary resident status under Section 245A of the Act. 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 application of the “preponderance of the evidence” standard may require an examination of each piece of relevant evidence and a determination as to whether such evidence, either by itself or when viewed within the totality of the evidence, establishes that something to be proved is probably true. *Matter of E-M-*, 20 I&N Dec. at 80. When viewed by itself, the relevant evidence in the applicant’s record is of minimal probative value. The affidavits and letters contain several deficiencies and therefore are not probative evidence of the applicant’s residence in the United States during the requisite period. The applicant’s W-2 Forms and California Identification Card only relate to the applicant’s residence in the United States since 1986. Moreover, when viewed within the totality of the evidence, these documents do not establish that the applicant’s claim is probably true. The applicant’s record contains original receipts with dates that have been visibly altered and original earnings statements with dates that are inconsistent with evidence in the record. The applicant’s submission of altered and inconsistent documentation draws into question the overall credibility of her evidence. Consequently, the applicant has failed to satisfy her burden of proof in this proceeding.

In conclusion, 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 she 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.