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FILE: [REDACTED]  
MSC 05 228 11264

Office: LOS ANGELES

Date: **MAY 01 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, 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. 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. Although the director made comments suggesting 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, the applicant disputes the director's conclusion and submits a brief in support of her assertions.

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 applicant submitted Form I-687 and supplement on May 16, 2005 without any supporting documentation. On January 25, 2006, the director issued a request for further evidence. In response, the applicant submitted a number of documents, including the following items, which pertain to her claimed U.S. residence during the statutory period:

1. Two identical affidavits from [REDACTED] and [REDACTED] dated December 5, 2005 and December 3, 2005, respectively. Both affiants provide two identical lists of the applicant's purported residential addresses in the United States since October 1981. However, neither affiant disclosed how he became acquainted with the applicant, nor did either individual provide any details of the applicant's life in the United States during the time periods they each claimed to have been acquainted with her. As such, these affidavits can only be afforded minimal weight as evidence of the applicant's residence in the United States during the statutory period.
2. A birth certificate for [REDACTED] the applicant's son, showing that he was born in the United States on March 11, 1988.
3. Photocopied rent receipts issued to the applicant for various months within the statutory period. The receipts for January (or June) 1982, May 1983, February 1984, and November 1985 were issued by [REDACTED]; the receipt for November 1986 was issued by [REDACTED] and the receipts for January 1987 and January 1988 were issued by [REDACTED]. It is noted that the receipts for rent purportedly paid in 1987 and 1988 identify the applicant's residence as [REDACTED], Los Angeles, California. However, based on the applicant's account of her residential history in the United States, as provided in No. 30

of the Form I-687, which the applicant signed under penalty of perjury, her residence from December 1986 to March 1992 was located at [REDACTED]. According to the applicant, she resided at [REDACTED] from October 1981 to June 1983. These rental receipts also conflict with information provided by the affiants in No. 1 above, both of whom provided the exact same list of residences as the one provided by the applicant in her 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). Furthermore, 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. *Id.* In light of the significant inconsistencies described above, the photocopied rental receipts for all seven years (from 1982 to 1988) will be given no evidentiary weight as proof of the applicant's residence in the United States during the requisite time.

4. Copies of envelopes addressed to the applicant at her purported residence at [REDACTED] and [REDACTED], respectively. It is noted that neither envelope contains a legible postal date stamp and, therefore cannot be used as evidence to substantiate the applicant's claim.
5. A receipt for funds transferred by the applicant via Western Union. It is noted that the right hand portion of the form that is meant to be completed by the staff person assisting with the fund transfer contains a handwritten dated, May 1984, indicating that the transfer was completed on that month and year. However, the left hand side of the form that was completed by the applicant indicates that the applicant's residential address at the time was [REDACTED]. It is noted, however, that this address was not included by the applicant in the list of residences that was provided in No. 30 of the Form I-687. Furthermore, according to the month and year signifying the issue date of the Western Union form as provided on the lower right hand side of the form, the version of the form that was used was not issued until February 1996. Based on this significant deficiency, the AAO observes that this document was altered and therefore will be afforded no probative value as evidence in support of the applicant's claimed residence in the United States during the statutory period.
6. A letter dated February 17, 2006 from [REDACTED] who claimed that he had known the applicant since 1982 when she was six months pregnant. [REDACTED] provided no information as to how he met the applicant nor did he claim to have maintained contact with the applicant through the statutory period.
7. An affidavit dated February 20, 2006 from [REDACTED] who claimed that to have known the applicant since 1981. The affiant stated that the applicant was pregnant in 1982 at the age of 15 and claimed that the applicant left the United States in November 1982 and returned to the United States in January 1983.

On appeal, the applicant strongly disputes the director's decision, claiming that she has resided in the United States continuously with the exception of two absences, which she claims occurred from November 10, 1982 to January 2, 1983, for a total of 53 days, and again from May 25, 1986 to July 27, 1986, for a total of 63 days. The applicant further contends that the documents that she has furnished are sufficient to satisfy her burden of proof relating to her claim of residence in the United States for the requisite period. Additionally, the applicant submits a letter dated September 22, 2006 from Reverend [REDACTED] of Sacred Heart Church stating that the applicant has been a member of his congregation for 25 years. The AAO notes, however, that in No. 31 of the Form I-687, where the applicant was asked to list her affiliation or association with any clubs, churches, etc., her response was "none." As [REDACTED] statement is inconsistent with information provided by the applicant, it will be afforded minimal weight as corroborating evidence. The applicant also submits a letter dated September 22, 2006 from [REDACTED] stating that she has known the applicant since January 1984. While [REDACTED] claimed that the applicant was employed by her as a childcare provider from January 5, 1984 to December 15, 1987, she failed to provide the applicant's residential address at the time of such employment as required by 8 C.F.R. § 245a.2(d)(3)(i), which provides a list of criteria for letters of employment.

Thus, despite the applicant's claims, the crucial deficiencies in a number of the supporting documents submitted by the applicant give rise to serious doubt as to the validity of the applicant's claim and the reliability of the evidence provided in support thereof. *See id.*

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 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.

Additionally, while not specifically addressed by the director, the applicant has admitted to having been absent from the United States on two occasions with each occasion resulting in an absence of longer than 45 days. In light of this information, it is important to note that an alien shall be regarded as having resided continuously in the United States if at the time of filing an application for temporary resident status, no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, through the date the application is filed, unless the alien can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the alien was maintaining residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.1(c).

Accordingly, even if the applicant's credibility and the validity of the supporting documentation were not brought into question, the applicant's two prolonged absences suggest that she did not reside continuously in the United States for the requisite period. The applicant has provided no evidence to establish that on each

occasion, there were "emergent reasons" preventing her from returning to the United States within the time period allowed. Thus, the applicant is not eligible for temporary residence on this basis as well.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a de novo basis).

The applicant is ineligible for temporary residence for the above stated reasons, with each considered as an independent and alternative basis for denial.

**ORDER:** The appeal is dismissed. This decision constitutes a final notice of ineligibility