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FILE: [REDACTED]
MSC 06 006 12426

Office: NATIONAL BENEFITS CENTER

Date: **MAY 19 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 Director, National Benefits Center, and is now before the Administrative Appeals Office 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 the affidavits submitted by the applicant as proof of her residence only addressed the applicant's residence in the United States during a portion of the statutory 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 challenges the director's decision and submits a statement in support thereof.

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. Here, the applicant has not met this burden.

The record shows that the following documentation has been submitted in support of the applicant's claim:

1. An affidavit dated December 5, 2005, from [REDACTED] who claimed that he met the applicant in 1985 at a Chinese New Year celebration. He stated that he has been friends with the applicant since then and gets together with her occasionally. However, Mr. [REDACTED] did not state how frequently he saw the applicant between the time he met her and the end of the statutory period, nor did he provide any information about the events and circumstances of the applicant's life during the relevant time period.
2. Two photocopied black and white photographs of the applicant with a handwritten number that appears to represent the purported date of the event in the photograph. The handwritten numbers suggest that one photograph was taken in 1986 and the other was taken in 1987. Aside from the handwritten numbers, which could have been written by anyone at anytime, there is no indication that these photographs were actually taken during the years alleged by the numbers. As such, these photographs cannot be afforded evidentiary weight in this proceeding.
3. An affidavit dated November 30, 2005 from [REDACTED] who claimed that he met the applicant in October 1986 when the applicant was employed at his home as a part-time care giver who also provided cooking and cleaning services. With regard to letters of past employment, 8 C.F.R. § 245a.2(d)(3)(i) sets forth specific guidelines that require the employer

to provide the alien's address at the time of employment and the exact period of employment. This relevant information was not provided by this affiant.

4. An affidavit dated December 9, 2005 from [REDACTED] who claimed that he met the applicant in September 1986 at [REDACTED] in Washington, D.C. The affiant claimed that he lived one block away from the applicant. However, he did not state how often he saw the applicant, nor did he provide any information about the events and circumstances of the applicant's life during the relevant time period. As such, this document has little probative value in establishing the applicant's residence in the United States as claimed.

Although the applicant provided other documents attesting to her presence in the United States in 1990, they have no probative value, as they do not establish that the applicant was residing in the United States during the statutory period and, therefore, need not be addressed.

On August 28, 2006, the director denied the application, noting that the applicant failed to provide any documentation establishing her residence in the United States since prior to January 1, 1982 until 1985.

On appeal, the applicant misinterprets the director's comments to mean that the adverse conclusion was based, in part, on the applicant's failure to provide documentation of her unlawful entry. However, careful review of the director's decision suggests that the director simply summarized the submitted evidence and found that the applicant was unable to establish that she entered the United States prior to January 1, 1982. The director did not actually expect the applicant to provide documentation of the unlawful entry itself.

The record shows that the applicant provided no evidence to show that she resided in the United States since prior to January 1, 1982 until 1985 and provided only deficient evidence to establish her residence in the United States since 1985. As previously stated, the affidavits submitted on the applicant's behalf lack sufficient information and, therefore, can only be afforded minimal weight as evidence of the applicant's unlawful residence during the time period in question.

The absence of sufficiently detailed supporting documentation to corroborate the applicant's claim of continuous residence 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 applicant's 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.