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U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE: [REDACTED]  
MSC-05-025-10050

Office: NEWARK

Date: **MAY 21 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:

[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, Newark. 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. Specifically, the director stated that the applicant failed to submit sufficient evidence to meet her burden of proof. Because the applicant failed to meet her burden of proof, the director found she was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

It is noted that the director raised the issue of class membership in the decision. Since the application was considered on the merits, the director is found not to have denied the applicant's claim of class membership.

On appeal, the applicant asserts that she did enter the United States before January 1, 1982 and that she was continuously physically present in the United States from November 6, 1986 through the end of the requisite period. She submits two affidavits in support of her application.

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) 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 a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on October 25, 2004. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant showed her addresses in the United States during the requisite period to be: [REDACTED] in Fort Lauderdale, Florida from February 1981 to May 1981; and [REDACTED] in Fort Lauderdale, Florida from May 1981 until June 1995. At part #32 where the applicant was asked to list all of her absences from the United States, she indicated she only had one absence since her first entry into the United States. Here, she showed her absence from the United States was from April to May 1986. At part #33, where the applicant was asked to list all of her employment in the United States since she first entered, she showed she was employed as a housekeeper for [REDACTED] in Old Bridge, New Jersey from May 1981 until May 2005. It is noted that the applicant indicated she was employed

as a housekeeper in New Jersey while she was living in Fort Lauderdale, Florida. It is further noted that Old Bridge, New Jersey is approximately 1,245 miles from Fort Lauderdale, Florida.

Also in the record is an arrest record. This record indicates that the applicant was arrested in Miami, Florida on charges of attempting to immigrate without an immigrant visa. The record indicates that the applicant was arrested on October 29, 1996. At the time the applicant was arrested she used the name [REDACTED]. Under oath, the applicant indicated to the officer who arrested her that she had entered the United States in April 1994 and overstayed her visa at that time, returning on September 29, 1996. It is noted that the applicant did not show that she was absent in 1994 or in 1996 on her Form I-687, casting doubt on whether the applicant has fully and accurately represented her absences from the United States on that form.

The applicant has the burden of proving by a preponderance of the evidence that he has resided in the United States for the requisite period. 8 C.F.R. § 245a.2(d)(5). To meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. 8 C.F.R. § 245a.2(d)(6). The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that an applicant may submit to establish proof of continuous residence in the United States during the requisite period. This list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts or letters. An applicant may also submit any other relevant document pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

Here, the applicant submitted the following documents that are relevant to the requisite period:

Affidavits, declarations and letters:

- A letter from [REDACTED] that is notarized and is dated July 6, 2004. In this letter, the declarant states that she met the applicant in 1981. She states that the applicant has helped her perform household related jobs for her. Here, the declarant does not indicate where she met the applicant or whether it was in the United States. She does not indicate that she personally knows that the applicant resided in the United States during the requisite period. Because this declarant does not state that she knows the applicant resided in the United States during the requisite period, this letter carries no weight as proof that she did so.
- An affidavit from [REDACTED] that was notarized on September 16, 2004. Here, the affiant states that he employed the applicant since May 1981. He states that the applicant worked for him as a babysitter for his two daughters since that time. The affiant goes on to say that the applicant also worked for him caring for his mother from December 1990 until August 2000. Here, the affiant fails to indicate how he can verify the applicant's start date

working for him. He fails to indicate when the applicant's end date of employment for him was or whether there were periods of time during the requisite period when she did not work for him. He does not submit proof of his residence during the requisite period. It is again noted here that the applicant indicated she resided in Florida when she worked for this affiant in New Jersey from May 1981 until May 2005. Because this affidavit is significantly lacking in detail, it carries minimal weight in establishing that the applicant resided in the United States during the requisite period.

- An affidavit from [REDACTED] that was notarized on September 14, 2004. The affiant states that she resides in New Jersey. It is noted here that the applicant indicated that she resided in Old Bridge, New Jersey since July 1995, but in Fort Lauderdale Florida for the duration of the requisite period. The affiant asserts that she has known the applicant since 1980. Here, she fails to indicate where she met the applicant or whether it was in the United States. This is significant because the applicant has indicated that she did not enter the United States until May 1981. The affiant states that the applicant worked for her for four years when she managed the Birch Hill Night Club and Picnic Grounds for [REDACTED] Stock. Here, the affiant does not indicate when the applicant worked for her or whether it was during the requisite period. It is noted that the applicant did not indicate that she ever worked for [REDACTED] on her Form I-687. It is further noted that the affiant does not state that she personally knows that the applicant resided in the United States during the requisite period. Because this affiant does not state that she personally knows that the applicant resided in the United States during the requisite period, this affidavit carries no weight as evidence that she did so.
- An affidavit from [REDACTED] that was notarized on September 16, 2004. In this affidavit, the affiant states that he resides in New Jersey. He states that he worked for [REDACTED] since 1979. He states that he has known the applicant since 1980. However, he fails to indicate where he met the applicant or whether it was in the United States. This is significant because the applicant has indicated that she did not enter the United States until May 1981. The affiant states that he has observed the applicant working at various jobs within the Art Stock Organization. Here, he does not indicate when the applicant worked for the Art Sock Organization or whether it was during the requisite period. He does not indicate that he personally knows that the applicant resided in the United States during the requisite period. Because this affiant does not state that he personally knows that the applicant resided in the United States during the requisite period, this affidavit carries no weight as evidence that she did so.

Other documents relevant to the requisite period:

- An Immunization Record for [REDACTED] who was born on January 18, 1973. This record shows that its bearer was immunized in September and October of 1986. The applicant has not submitted evidence to prove that she has ever used this name or that she is related to any individual bearing this name. Therefore, this document does not carry any

weight in establishing that the applicant resided in the United States during the requisite period.

- A PTA membership card issued on October 10, 1986 to [REDACTED]. The applicant has not submitted evidence to prove that she has ever used or that she is related to any individual bearing this name. Therefore, this document does not carry any weight in establishing that the applicant resided in the United States during the requisite period.

While the AAO notes that the applicant also submitted documents that show her presence in the United States in years subsequent to the requisite period, the issue in this proceeding is whether the applicant submitted sufficient evidence to establish that she resided in the United States for the duration of the requisite period. The requisite period began on the date the applicant entered the United States before January 1, 1982 and ended when the applicant attempted to file for legalization during the original legalization filing period, which was between May 5, 1987 and May 4, 1988. Therefore, documents that pertain to dates subsequent to this period are not relevant for this proceeding.

The director denied the application for temporary residence on August 28, 2006. In denying the application, the director stated that the applicant failed to show credible evidence that she resided unlawfully in the United States for the duration of the requisite period. Therefore, the director found the applicant failed to meet her burden of proving by a preponderance of the evidence that she resided continuously in the United States for the duration of the requisite period.

On appeal, the applicant asserts that she entered the United States before January 1, 1982 and then was continuously physically present in the United States from November 6, 1986 until the end of the requisite period. She submits two affidavits in support of her application as follows:

- A photocopy of an affidavit from [REDACTED] that was notarized on September 21, 2004. In this affidavit, the affiant states that he has known the applicant for approximately 20 years. The affiant states that he is a United States Citizen who currently resides in New York. He further states that he has seen the applicant while he was visiting [REDACTED] in New Jersey and Florida. However, he does not indicate when or where he met the applicant or whether he met her in the United States. He does not state that he personally knows that the applicant resided in the United States during the requisite period. He does not indicate the frequency with which he saw the applicant during the requisite period. Because this affiant does not state that he personally knows that the applicant resided in the United States during the requisite period, this affidavit carries no weight as evidence that she did so.
- A photocopy of an affidavit from [REDACTED] that appears to have been notarized on October 15, 2004. In this affidavit, the affiant states that he has known the applicant since 1981. Here, the affiant does not state where he met the applicant or indicate whether it was in the United States. He states that she was employed by his friend, [REDACTED] who employed him as the general manager of his night club in Florida. He states that the

applicant was [REDACTED]'s caretaker until her death in August 2000. Here, the affiant does not state that he personally knows that the applicant resided in the United States during the requisite period. He fails to indicate the frequency with which he saw the applicant during the requisite period or to state whether there were periods of time when he did not see the applicant during that time. Because this affiant does not state that he personally knows that the applicant resided in the United States during the requisite period, this affidavit carries no weight as evidence that she did so.

In summary, the applicant has provided affidavits that are significantly lacking in detail from affiants in both New Jersey and Florida. She has asserted that she resided in Florida and worked in New Jersey during the requisite period. Two affiants from whom the applicant submitted affidavits claim that they met the applicant in 1980 when the applicant has indicated that she did not enter the United States until May 1981. There is evidence in the record that shows the applicant provided sworn testimony to an immigration officer that she entered the United States in 1994. Here, the applicant failed to indicate this entry on her Form I-687. These inconsistencies cast doubt on whether the applicant has truthfully represented her residences and her employment in the United States to CIS.

Doubt cast on any aspect of the applicant'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 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).

In this case, the absence of credible, sufficiently detailed, consistent documentation to corroborate the applicant's claim of continuous residence for the 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.