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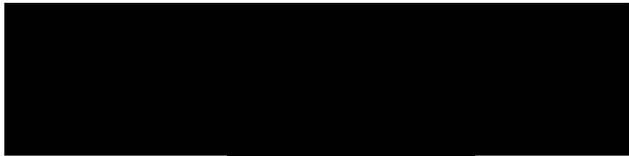
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FILE:

[Redacted]  
MSC-05-330-10854

Office: BOSTON

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: 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, Boston. 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 does not think that her interview was fair in that the immigration officer who interviewed her refused some of her evidence and informed her that her application was going to be denied before giving her an opportunity to explain her entry into and residence in the United States since December 2, 1981. She submits additional 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).

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. See 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 August 26, 2005.

The applicant submitted the following attestations:

- An affidavit from \_\_\_\_\_ in which he stated that he has known the applicant since December of 1981 when he met her along with friends at the Logan Airport in Boston, Massachusetts. He also stated that they became good friends, visiting one another and meeting each other at social gatherings and at church services regularly. He further stated that the applicant left for Kenya in 1988 due to death in her family and did not return to the United States until 2001. This information is inconsistent with the information provided by the applicant on her Form I-687 application, part #31 where she did not list any affiliations or associations with any churches, clubs, or organizations in the United States. This inconsistency calls into question the affiant's ability to confirm that the applicant resided in the United States throughout the requisite period. Because this declaration contains testimony that conflicts with what the applicant showed on her Form I-687 application, doubt is cast on assertions made by the affiant. 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, 591-92 (BIA 1988). Although not required, there is no evidence to demonstrate that the affiant was himself present in the United States during the requisite period. Because this affidavit is inconsistent with statements made by the applicant on her Form I-687 application, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

- A declaration from [REDACTED] in which he stated that he is the applicant's son and that he, his mother, and his grandfather traveled by air from Kenya to the United States in December of 1981 to attend a religious conference. He also stated that they stayed in the country until 1988 when they left for Kenya, and that they stayed in that country until 2001 when they returned to the United States. Here, the declarant has failed to submit documentary evidence to substantiate his claim. It is noted that the declarant was thirteen years old at the time of the claimed trip to America. It is further noted that the declarant has failed to submit documents such as his school records and medical records to demonstrate that he himself was present in the United States throughout the requisite period. Because the declaration lacks detail and is not accompanied by any supporting documentation, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.
- A declaration from [REDACTED] in which she stated that she met the applicant in 1980 while in the company of friends and fellow members at church. She further stated that her family and the applicant's family attended the same church in Kenya. The declarant stated that she knew the applicant entered the United States when she said she did because she told her so. The declarant also stated that she was living and working in Kenya between January of 1982 and May of 1988, and did not enter the United States until 2000. Here, the statements made by the declarant with respect to the applicant's entry into the United States is not based upon her firsthand knowledge, but rather upon what the applicant told her. Although not required, there is no evidence to demonstrate that the declarant was present in the United States throughout the requisite period. Because this declaration fails to corroborate the applicant's claim of being in the United States since prior to January 1, 1982, it can be afforded little weight in establishing that the applicant resided in the country throughout the requisite period.
- A declaration from [REDACTED] who stated that she lives in Kenya and is the sister of the applicant. She further stated that she has personal knowledge of the applicant's trip to the United States in 1981 because she saw her off at the airport and because she provided her with some of the funds needed to purchase the airline ticket. She also stated that the applicant returned to Kenya in 1988 and stayed in that country until 2001 when she returned to the United States. The declarant failed to indicate the frequency in which she communicated with the applicant during the applicant's stay in the United States. There is nothing to show that the declarant was aware of the applicant's places of residence during her

stay in America. Here, the declaration is lacking detail sufficient to support the applicant's claim of continuous unlawful residency in the United States throughout the requisite period.

- An affidavit from [REDACTED] who stated that she was a sales agent with Kenya Airways and a long time friend of the applicant. She also stated that she had an opportunity to observe the applicant's airline ticket that showed that she would be traveling from Kenya to Boston, Massachusetts in December of 1981. She further stated that she accompanied the applicant to the airport on the day of her departure and that the applicant had informed her of her plans to travel to America. She stated that she was informed by the applicant, and has no reason to disbelieve her, that she resided in Boston until January of 1988 when she returned to Kenya. She also stated that the applicant remained in Kenya until her return to the United States in October of 2001. There is no indication from the record that the affiant was ever in the United States. The affiant's statement pertaining to the applicant's alleged stay in the country is not based upon her direct personal knowledge, therefore it can be given little weight.

In denying the application the director noted that the applicant had failed to meet her burden of proof in establishing that she entered into and maintained continuous unlawful residency in the United States since before January 1, 1982.

On appeal, the applicant asserts her claim of eligibility for temporary residence status and restates that she does not think that her interview was fair in that the immigration officer who interviewed her refused some of her evidence and informed her that her application was going to be denied before giving her an opportunity to explain her entry into and residence in the United States since December 2, 1981. The applicant resubmits copies of her B1/B2 visa and her Kenyan passport.

The applicant submitted a letter from [REDACTED] of [REDACTED] & Company Advocates in which she states that the applicant visited the United States in 1981 and that while in America, Kenya experienced a coup d'etat in 1982. She also states that the applicant was not able to return to Kenya until 1988 when the political situation became stable. The letter fails to show [REDACTED] direct personal knowledge of the applicant's residence in the United States during the requisite period, therefore it will be given little weight.

In summary, the applicant has not provided sufficient, probative evidence of residence in the United States relating to the requisite period. She has submitted two attestations that are not credible and others that can be accorded only minimal weight in establishing that she resided in the United States throughout the requisite period.

The absence of sufficiently detailed 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 attestations that are not credible and affidavits with minimal probative value, it is concluded that she has

failed to establish continuous residence in an unlawful status in the United States for the requisite period 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.