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FILE: MSC 06 098 12288 Office: NEW YORK Date: **MAY 21 2008**

IN RE: Applicant:

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:

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, New York. 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, on January 6, 2006. The applicant was interviewed on May 31, 2006 in connection with her Form I-687. On July 5, 2006, the director issued a Notice of Intent to Deny (NOID) the application and ultimately denied the application on August 21, 2006. On appeal, counsel for the applicant asserts that Citizenship and Immigration Services' (CIS) decision is arbitrary and capricious. Counsel submits three additional affidavits from three of the individuals who had previously submitted affidavits, as well as undated photographs of individuals with the applicant but who are not identified.

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 applicant attempted to file the application. 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 or attempting to file the application. 8 C.F.R. § 245a.2(b)(1).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "until the date of filing" shall mean 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 periods, 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. *See* 8 C.F.R. § 245a.2(d)(6). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

Even if the director has some doubt as to the truth, if the applicant 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 (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.

An applicant for temporary residence under the CSS/Newman Settlement Agreements need only 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 have been physically present in the United States from November 6, 1986 until the date of filing the application as defined above.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to establish her entry into the United States prior to January 1, 1982 and continuous unlawful residence since such date through the date she attempted to file the application.

On the Form I-687, the applicant listed her name as _____ and indicated that she also used the last name _____ her common law husband's last name. In the space provided on the Form I-687 to list absences from the United States dating back to January 1, 1982, the applicant listed absences in December 1994, June 1995, June 1996, May 2003, and June 2004. The applicant indicated: that she belonged to St. Paul's Church from 1987 to present; that she belonged to the Nazareth Deliverance organization from 1989 to 1993; and that she belonged to Mt. Zion House of Prayer from 2001 to 2002. The record also includes a March 10, 2004 statement signed by Bishop _____ stating that the applicant had been a member of the St. Paul's Seven Day Apostolic Spiritual Baptist Faith Church since 1987. Bishop _____'s statement is written on church letterhead and has the church seal. Bishop _____ does not indicate the inclusive dates of the applicant's church membership and does not establish the origin of the information the pastor is attesting to as required by the regulation at 8 C.F.R. § 245a.2(d)(3)(v). Moreover, Bishop _____'s statement does not include the totality of the requisite time period.

The record also includes several form affidavits dated in March 2004 that have been submitted to establish the applicant's residency in the United States for the requisite time periods. In the March 2004

affidavits, the affiants state that they had known the applicant since 1980 and knew she had continuously resided in the United States except for brief trips to Jamaica, as each had been in regular contact with the applicant. The affiants do not provide details of the circumstances or events demonstrating how they met the applicant or any subsequent interactions with the applicant. The record also includes:

- A December 12, 2006 form affidavit by [REDACTED] who declared that she met the applicant in 1980 and that she had known the applicant for 25 years through a church retreat. The affiant provided a street address and a phone number.
- A March 15, 2004 form affidavit signed by [REDACTED] stating that the affiant had known the applicant since 1980 and knew she had continuously resided in the United States except for brief trips to Jamaica as she had been in regular contact with the applicant. A December 14, 2005 form affidavit by [REDACTED] who declared that she met the applicant in January 1980, and that she had known the applicant for 25 years, and met the applicant occasionally at their community recreational meeting and club meetings. The affiant provided her street address and a phone number. The record contains the first page of [REDACTED]'s U.S. passport issued in May 1999. The record also includes a third affidavit by [REDACTED] dated August 1, 2006, wherein the affiant declares that she has known the applicant since January 20, 1980 through club meetings, community recreational meetings, and church and church functions.
- A March 12, 2004 form affidavit signed by [REDACTED] stating that the affiant had known the applicant since 1980 and knew she had continuously resided in the United States except for brief trips to Jamaica as she had been in regular contact with the applicant. A December 12, 2005 form affidavit by [REDACTED] who declares that she met the applicant in August 1980, and that she had known the applicant for 25 years, and that she is acquainted with the applicant because she talked to her at a gospel street meeting. The affiant provided her street address and a phone number. The record contains a photocopy of the affiant's U.S. naturalization certificate issued February 3, 1988. The record also includes a third affidavit by [REDACTED] dated July 31, 2006. In the third affidavit the affiant declares that she has been acquainted with the applicant since 1980 and is acquainted with the applicant because of their attendance at a fellowship service at their church.
- A December 11, 2005 form affidavit by [REDACTED] who declared that he met the applicant in July 1980, and that he had known the applicant for 25 years and was acquainted with the applicant as she was active in the community, and that he had visited the applicant's home on many occasions. The affiant provided his street address and a phone number. The record contains a photocopy of the first page of the affiant's U.S. passport issued in August 2001. The record also includes a second affidavit by [REDACTED] dated July 31, 2006 wherein the affiant declares that he has known the

applicant since 1981 and that he is acquainted with the applicant because they attend church and social functions together.

- A December 11, 2005 form affidavit by [REDACTED] who declared that he met the applicant in December 1979, and that he had known the applicant for 27 years, and that he corresponded and visited the applicant's home frequently. The affiant provided his street address and a phone number. The record contains a photocopy of the affiant's U.S. naturalization certificate issued July 29, 2005.

A March 14, 2004 form affidavit by [REDACTED] stating that the affiant had known the applicant since 1980 and knew she had continuously resided in the United States except for brief trips to Jamaica as she had been in regular contact with the applicant. A December 13, 2006 form affidavit by [REDACTED] who declared that she met the applicant in August 1980 and that she knew the applicant because they were employees at the same agency for five years. The affiant provided her street address and a phone number. The record contains a photocopy of the first page of the affiant's U.S. passport issued July 11, 1995.

The record also contains a Form I-864, Affidavit of Support under Section 213A of the Act. The applicant is the sponsored alien on the Form I-864. Included on the Form I-864 are the applicant's four children and their birthdates on November 30, 1983, March 27, 1985, and October 15, 1987, and November 11, 1988. The children born in 1983, 1985, and 1987 all have alien numbers ascribed to them, an indication the children are not U.S. citizens. In her May 31, 2006 CIS interview, the applicant indicated that she had left the United States in 1983, 1985, and in 1987 to return to Jamaica to have a baby and returned to the United States two weeks later and that now her first three children are in the United States and the fourth child is in Jamaica.

As referenced above, the director determined that the affidavits were not subject to verification and/or did not confirm that the affiant was in the United States during the requisite time period.

On appeal, counsel for the applicant submits the phone numbers for three of the affiants and undated photographs of the applicant with different unidentified individuals. Counsel asserts that the applicant has provided affidavits amenable to verification and that there is no reason to believe that the affiants were anything but truthful. Counsel contends that the applicant has provided evidence of her residence in the United States before January 1, 1982.

The AAO finds that the birth of three of the applicant's children in 1983, 1985, and 1987 in a country other than the United States, casts doubt upon the applicant's residence in the United States for the requisite time periods. The applicant's failure to list the claimed absences from the United States in 1983, 1985, and 1987 to have her children casts further doubt on the veracity of the applicant. In such a case, CIS must scrutinize any affidavits or other documentation submitted to establish the applicant's residence in the United States for the required time period.

In this instance, the applicant has provided form affidavits and statements that do not provide sufficient detail of the circumstances and events surrounding the applicant's initial meeting with the document originators and their subsequent interaction to overcome the doubt cast by the applicant's lack of forthrightness. Moreover, the persons making the statements do not provide the circumstances of meeting or subsequent interaction with the applicant sufficient to confirm that their memories accurately recall the dates of such meeting and interaction. For example, the two affidavits of [REDACTED] conflict, in that [REDACTED] indicates he met the applicant in July 1980 in the first affidavit, and that he met the applicant in 1981 in the second affidavit. This discrepancy reflects the lack of concrete and specific details that characterize the statements submitted in support of the application. The general nature of information that characterizes these documents lacks sufficient indicia of the reliability of their assertions. Further, the affiants do not provide information regarding the names of the churches they attended with the applicant beginning prior to January 1, 1982 and through the requisite time period, or provide evidence of their attendance at those churches. Nor do the affiants provide the name of the club or recreational community or the workplace or other places each met the applicant as well as evidence of their continued interaction. The affidavits and other statements in support of the application are insufficient to establish the applicant's entry into the United States prior to January 1, 1982 and unlawful presence in the United States for the requisite time period.

These deficient statements and the applicant's statement comprise the only documentation of the applicant's residence in the United States from prior to January 1, 1982 through the requisite time period. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period detracts 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 the applicant has failed to meet her burden of proof and 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--*, *supra*. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis. The appeal will be dismissed.

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