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FILE: [REDACTED] Office: LOS ANGELES Date: **MAY 22 2008**
MSC-06-014-12777

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. 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 to prove by a preponderance of the evidence that she resided in the United States for the duration of the requisite period. Because the applicant failed to provide this evidence, 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 that she has previously submitted documentation in support of her application. She submits additional 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 14, 2005. 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 address in the United States during the requisite period to be [REDACTED] in Los Angeles, California from September 1981 until November 2001. At part #32 where the applicant was asked to list all of her absences from the United States, she indicated that during the requisite period she had one absence. Here, she showed she was absent from November 11 to November 23 in 1986 when she went to Mexico to attend a funeral. At part #33, where the applicant was asked to list all of her employment in the United States since she first entered, she showed that she was employed doing landscaping and as a house cleaner from 1986 until November 2004. It is noted that though the applicant indicated she entered the United States in 1981, she did not show employment in the United States from 1981 through 1985.

The applicant has the burden of proving by a preponderance of the evidence that she 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 her 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).

Initially, the applicant failed to submit evidence that she resided continuously in the United States with her Form I-687.

The director of the National Benefits Center issued a Notice of Intent to Deny (NOID) to the applicant on November 17, 2005. In his NOID, the director stated that the applicant failed to submit evidence of the following: that she entered the United States before January 1, 1982 and then resided in a continuous unlawful status except for brief absences from before 1982 until the date she (or her parent or spouse) was turned away by Immigration and Naturalization Service (INS) when they tried to apply for legalization; that she was continuously physically present in the United States except for brief, casual and innocent departures from November 6, 1986 until the date that she (or her parent or spouse) tried to apply for legalization; and that she was admissible as an immigrant. The director granted the applicant 30 days within which to submit additional evidence in support of her application.

In response to the director's NOID, the applicant submitted the following evidence that she resided in the United States for the requisite period:

A lease for an apartment located at [REDACTED] in Los Angeles, California. This lease shows that the applicant leased an apartment with [REDACTED] and [REDACTED]. This lease indicates that [REDACTED] was the manager of that property. This lease was from September 1, 1981 until September 1, 1982. It is noted that this lease is not signed by the applicant, but rather by [REDACTED].

- A letter from [REDACTED] that was notarized on December 10, 2005. Here, Mr. [REDACTED] states that he has known the applicant for 24 years. He states that he first met the applicant when she was cleaning his friend's house. Though he attests to the applicant's character, he does not state that he personally knows that the applicant resided in the United States for part or all of the requisite period. He fails to indicate the frequency with which he saw the applicant during the requisite period or whether there were periods of time during the requisite period when he did not see the applicant. Because of its significant lack of

detail, this letter carries only minimal weight as evidence that the applicant resided in the United States during the requisite period.

- Three photocopies of receipts for personal items sold to [REDACTED] on October 5, 1981, December 20, 1981 and October 10, 1982 from unspecified stores. Though these photocopies of receipts bear the applicant's name, they do not indicate which stores they are from or whether they are from stores in the United States. Therefore, they carry no weight as proof that the applicant resided in the United States during the requisite period.
- A photocopy from Thifty Payless Store dated September 28, 1981. This receipt does not indicate that it is associated with the applicant. Therefore, it carries no weight as proof that the applicant resided in the United States during the requisite period.
- A photocopy of a receipt from R [REDACTED] s dated October 4, 1981. The name [REDACTED] appears handwritten at the top of this receipt. It is noted that the name "[REDACTED]" appears at the bottom of this receipt.

The director denied the application for temporary residence on October 31, 2006. In denying the application, the director of the Los Angeles District Office noted that the applicant submitted evidence in support of her application in response to the NOID from the director for the National Benefits Center. However, this director stated that this evidence, when combined with testimony provided by the applicant during her interview with a Citizenship and Immigration Services (CIS) officer on October 19, 2006, did not allow her to meet her burden of proving that she resided continuously in the United States for the duration of the requisite period by a preponderance of the evidence.

On appeal, the applicant asserts that her claim of having resided continuously in the United States for the duration of the requisite period is supported by affidavits from individuals, rent receipts and other receipts for purchases during that time. She states that she does not have official government issued identification or banking records from that period because she was undocumented. She submits two additional documents in support of her application. Details of this additional evidence are as follows:

- A letter from N [REDACTED] l that was notarized on November 27, 2006. In this letter, [REDACTED] states that she has known the applicant for 25 years. She states that she met the applicant in October 1981. She states that she met the applicant through a friend. Here, she does not identify the friend who introduced her to the applicant. Though she attests to the applicant's character, she does not indicate that the applicant resided in the United States during the requisite period. She fails to indicate the frequency with which she saw the applicant during the requisite period. She further fails to indicate whether there were periods of time during the requisite period during which she did not see the applicant. Because of its significant lack of detail, this letter carries minimal weight as

evidence that the applicant resided continuously in the United States for the duration of the requisite period.

- A letter from [REDACTED] that was notarized on November 27, 2006. In this letter, [REDACTED] states that he has known the applicant for 25 years. He states that he was introduced to the applicant through mutual friends in December 1981. He states that the applicant has worked for him periodically as a nanny and a housekeeper. Here, he fails to indicate when he employed the applicant or whether it was during the requisite period. Though he attests to the applicant's moral character, he does not indicate that he personally knows that the applicant resided in the United States for part or all of the requisite period. Because of its significant lack of detail, this letter carries minimal weight as evidence that the applicant resided continuously in the United States for the duration of the requisite period.

In summary, though the applicant has submitted documents in support of her application, they are not sufficient to meet her burden of proof. None of the declarants who submitted these letters state they personally know the applicant resided in the United States for part or all of the requisite period. They are significantly lacking in detail such that, when considered as a whole, they carry very minimal weight as evidence that the applicant resided in the United States during the requisite period. Though the applicant submitted a lease dated September 1, 1981, she did not sign this lease. Further, this lease only pertains to one year of the requisite period and is not proof that the applicant resided at this property for the duration of that year. As was noted above, one of the photocopies of receipts submitted by the applicant cannot be clearly associated with her and three of the receipts she submitted do not show that they are for purchases made in the United States. The remaining photocopy of a receipt shows both the applicant's name and the name [REDACTED].” Furthermore, as all of these receipts pertain to the years 1981 and 1982 they receipts pertain to only two years of the requisite period. Though the applicant has stated she resided in the United States during the requisite period, she has not submitted any evidence that she did so for the duration of that time.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, seriously 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 she has failed to establish by a preponderance of the evidence that he 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.