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[REDACTED]

FILE: [REDACTED]
MSC 04-307-11172

Office: NEW YORK

Date: **MAY 23 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. 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, and that 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 acknowledged that the applicant submitted affidavits from individuals who claimed to have knowledge of the beneficiary's residence in the United States during the requisite period, but noted that the affidavits were insufficient to establish the beneficiary's continuous residence in the United States. The director also noted other facts in the record which the director believed cast doubt on the credibility of the applicant's claim. 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 addresses the director's concerns and further asserts that she has provided sufficient credible, probative evidence to meet her burden of proof.

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 be 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. 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).

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 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 Citizenship and Immigration Services (CIS) on August 2, 2004. The applicant signed this form under penalty of perjury, certifying that the information she provided is true and correct. 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 indicated that she resided at the [REDACTED] New York, New York from December 1981 until March 1986. Part # 35 of this application requests the applicant to list her employment in the United States since her entry. The applicant indicated that she was self-employed as a vendor in New York from December 1981 until October 1991.

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 her 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. The applicant did not submit any contemporaneous evidence of this nature pertaining to the requisite period.

An applicant may also submit any other relevant document pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L). In an attempt to establish continuous unlawful residence in this country for the duration of the requisite period, the applicant submitted two documents:

- A handwritten employment letter dated December 14, 2005 from [REDACTED] residing at [REDACTED], Newark, New Jersey. Though not required, [REDACTED] provided evidence of his identity and his undergraduate school records. He indicated that he met the applicant for the first time in 1981 at the Nigerian Independence Day and that they were introduced by a mutual friend. Mr. [REDACTED] did not indicate that he has any direct, personal knowledge of the applicant's continuous residence in this country for the duration of the requisite period. He offered no specific information regarding how frequently and under what circumstances he saw the applicant during the relevant period, nor did he provide any relevant details regarding the applicant's residence in the United States beyond their initial meeting. Given his claim that he has been a friend of the applicant's since 1981, the lack of detail in his statement is significant, and its probative value is limited.
- A notarized letter dated December 14, 2005 from [REDACTED], of the Franciscan Handmaids of Mary. The affiant stated that she met the applicant in 1981 when they were introduced by the presiding priest. Although the affiant confirmed that she met the applicant in the United States in 1981, she failed to state how she dates their initial acquaintance. She did not indicate that she has any direct, personal knowledge of her continuous residence in this country for the duration of the requisite period. She offered no specific information regarding how frequently and under what circumstances she saw the applicant during the relevant period, nor did she provide any relevant details regarding the applicant's residence in the United States beyond their initial meeting. Like the previous affiant, the statements do not provide any information that would lend credence to the applicant's claims of continuous residency throughout the statutory period and will therefore be given minimal weight.

On June 28, 2006, the director issued a Notice of Intent to Deny (NOID) to the applicant. The director acknowledged the applicant's claim that she entered the United States with her Uncle in December 1981, but noted that she furnished no evidence of such an entry. The director also noted that the two affidavits submitted do not provide sufficient credible information to establish that the applicant is eligible for the benefit sought. The director advised that credible affidavits are those which include some document identifying the affiant, some proof the affiant was in the United States during the statutory period, and some proof of a relationship between the affiant

and the applicant. The director advised the applicant that she had failed to submit documents that would establish by a preponderance of the evidence that she continuously resided in the United States for the duration of the requisite period, and afforded her 30 days in which to submit additional evidence in support of her application.

In response to the NOID, the applicant submitted a notarized letter from the affiant, Sister [REDACTED] in which the affiant states that she “came into this country in 1960 to become a nun . . . During the period of 1981-1988, I was residing at [REDACTED], New York, New York.” Though not required, she also provided a copy of her passport verifying her identity. While this information does help to establish that the affiant was present in the United States during the statutory period, it does not provide evidence of the applicant’s entry prior to January 1, 1982 or her continuous presence in the United States throughout the relevant period.

Accordingly, on September 13, 2006, the director denied the application. The director acknowledged the additional affidavits submitted, but found that given the paucity of evidence in the record, the applicant had failed to establish by a preponderance of the evidence that she had continuously resided in the United States for the duration of the requisite period.

On appeal, the applicant argues that the affidavits should be “considered seriously” since she was not of legal contract age during the statutory period. She provided no additional information or evidence.

Upon review, her assertions are not persuasive. While an applicant's failure to provide evidence other than affidavits shall not be the sole basis for finding that he or she failed to meet the continuous residency requirements, an application which is lacking in contemporaneous documentation cannot be deemed approvable if considerable periods of claimed continuous residence rely entirely on affidavits which are considerably lacking in certain basic and necessary information. As discussed above, the affiants' statements are significantly lacking in detail and do not establish that the affiants actually had personal knowledge of the events and circumstances of the applicant's residence in the United States. Neither of the affiants provided much relevant information beyond acknowledging that they met the applicant in 1981. Overall, the affidavits provided are so deficient in detail that they can be given no significant probative value. Further, this applicant has provided no contemporaneous evidence of residence in the United States relating to requisite period.

As is stated above, 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). The applicant has been given the opportunity to satisfy her burden of proof with a broad range of evidence pursuant to 8 C.F.R. § 245a.2(d)(3).

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 affidavits 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--*, *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.