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20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
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Services

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[REDACTED]

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FILE: [REDACTED] Office: NEW YORK Date: **MAY 28 2008**
MSC-04-280-10075

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, 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. 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 in her Notice of Intent to Deny (NOID) that the affidavits submitted by the applicant were not credible. The director granted the applicant 30 days within which to submit additional evidence in support of her application. Though the director noted that her office received a timely response to her NOID, she found it did not overcome her reasons for denial as stated in her NOID. She specifically noted that the affidavits the applicant submitted were not found credible because they were not submitted with proof that the affiants had direct personal knowledge of the events and circumstances of the applicant's residency. She stated that credible affidavits are those submitted with documents identifying the affiant, proof that there was a relationship between the affiant and the applicant, and proof that the affiant was in the United States during the requisite period. Here, the director found the affidavits submitted by the applicant did not meet these criteria. Because the applicant failed to provide credible 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.

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 submits a written statement responding to the director's reasons for denial and she submits additional evidence 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).

An applicant shall be regarded as having resided continuously in the United States if at the time of filing an application for temporary resident status, no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, through the date the application is filed, unless the applicant can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the applicant was maintaining residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.1(c).

If the applicant's absence exceeded the 45-day period allowed for a single absence, it must be determined if the untimely return of the applicant to the United States was due to an "emergent reason." Although this term is not defined in the regulations, *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), holds that emergent means "coming unexpectedly into being."

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 July 6, 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 Corona, New York from May 1981 until August 1985; and [REDACTED] second floor in South Ozone Park, New York from December 1985 until April 1989. At part #31 where the applicant was asked to list all churches and organizations that she was a member of, she indicated that she was a member of the Community United Methodist Church in Jackson Heights, New York and that her membership began in 1994. It is noted here that she did not indicate any other church memberships. At part #32 where the applicant was asked to list all of her absences from the United States, she indicated that she had one absence during the requisite period when she traveled to Colombia to visit her sick grandmother from June 17, 1987 until July 25, 1987, an absence of 38 days. 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 by [REDACTED] at [REDACTED] in Corona, New York as a housekeeper from May 1981 until August 1985 and then by “[REDACTED]” at [REDACTED] in South Ozone Park, New York as a babysitter from December 1985 until April 1989. The record shows that this employer’s name is actually [REDACTED]. It is noted that the applicant’s addresses of employment are the same addresses she showed as her addresses of residence. It is further noted that the applicant failed to indicate where she was residing or employed from August 1985 until December 1985.

Also in the record is a Form I-687 submitted to establish class membership in 1991. This Form I-687 is consistent with the applicant’s subsequently submitted Form I-687 with regards to addresses of residence, absences from the United States and employment in the United States during the requisite period. It is noted that at part #34 of this Form I-687 where the applicant was asked to list all churches of which she was a member, she did not show that she was a member of any churches.

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. 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 as evidence in support of her Form I-687 applications:

- A letter from [REDACTED] that was notarized November 7, 1991. In this letter the declarant states that the applicant worked for her as a helper from May 1981 until August 1985. She provides her telephone number at which she can be contacted. It is noted here that though the applicant indicated on her Form I-687 that she resided at this declarant's address of residence for four years, this is not noted in the declarant's letter.
- A notarized letter from [REDACTED] that is dated November 19, 1991 and was notarized on November 20, 1991. The declarant states that the applicant worked for her from December 27, 1985 until April 1989. The declarant provides her telephone number. It is noted here that though the applicant indicated on her Form I-687 that she resided at this declarant's address of residence for approximately four years, this is not noted in the declarant's letter.
- An affidavit from [REDACTED] that was notarized November 29, 1991. In this affidavit, the affiant states that she knows that the applicant first resided on [REDACTED] in Queens, New York from May 1981 until August 1985 and then resided on [REDACTED] in South Ozone Park, Queens, New York from December 1985 until April 1989. It is noted here that this affiant does not show where the applicant resided from August 1985 until December of that year. This affiant failed to indicate when or where she met the applicant or whether it was in the United States. Although not required to do so, the affiant did not provide proof that she herself resided in the United States during the requisite period.
- An affidavit from [REDACTED] that was notarized on November 15, 1991. In this affidavit, the affiant states that he knows that the applicant first resided on [REDACTED] in Queens, New York from May 1981 until August 1985 and then resided on [REDACTED] in South Ozone Park, Queens, New York from December 1985 until April 1989. It is noted here that this affiant does not show where the applicant resided from August 1985 until December of that year. This affiant failed to indicate when or where he met the

applicant. Although not required to do so, this affiant did not provide proof that he himself resided in the United States during the requisite period.

- An affidavit from [REDACTED] that was notarized on November 29, 1991. In this affidavit, the affiant states that he knows that the applicant first resided on [REDACTED] in Queens, New York from May 1981 until August 1985 and then resided on [REDACTED] in South Ozone Park, Queens, New York from December 1985 until April 1989. It is noted here that this affiant does not show where the applicant resided from August 1985 until December of that year. This affiant failed to indicate when or where he met the applicant. Although not required to do so, this affiant did not provide proof that he himself resided in the United States during the requisite period.

An affidavit from [REDACTED] that was notarized on November 29, 1991. In this affidavit, the affiant states that she knows that the applicant first resided on [REDACTED] in Queens, New York from May 1981 until August 1985 and then resided on [REDACTED] in South Ozone Park, Queens, New York from December 1985 until April 1989. It is noted here that this affiant does not show where the applicant resided from August 1985 until December of that year. This affiant failed to indicate when or where she met the applicant. Although not required to do so, this affiant did not provide proof that she herself resided in the United States during the requisite period.

- A letter from [REDACTED] and [REDACTED] that was notarized on February 28, 2006. In this letter the declarants state that they have known the applicant for more than 25 years. They attest to the applicant's moral character. However, they do not indicate when or where they met the applicant or state whether it was in the United States. They do not claim that they know the applicant ever resided in the United States. These declarants provide a telephone number at which they can be reached to verify information in this affidavit.
- A letter from [REDACTED] that was notarized on February 28, 2006. In this letter the declarant states that he has known the applicant since 1981. Though the declarant attests to the applicant's moral character, he does not indicate when or where he met the applicant. He fails to state that he knows that she resided in the United States during the requisite period.
- A letter from [REDACTED] that was notarized February 28, 2006. In this letter the declarant states that she has known the applicant since 1981. She provides a telephone number at which she can be reached to verify information in her letter. However, she does not state when or where she met the applicant or whether it was in the United States. She further fails to indicate whether she knows the applicant resided in the United States during the requisite period.

It is noted here that the applicant also submitted numerous other documents that are evidence that she resided in the United States after May 4, 1988 including employment verification letters, tax documents, bank documents, telephone bills, envelopes, hospital documents, a certificate showing the applicant attended an English conversation program, receipts, an I-94 card showing an entry subsequent to the requisite period, documents proving the applicant's residence subsequent to the requisite period, and photocopies of pages of a passport issued to the applicant after the requisite period. However, the issue in this proceeding is whether the applicant resided continuously in an unlawful manner in the United States during the requisite period, which began on a date prior to January 1, 1982 and ended when the applicant attempted to file for legalization during the original filing period, which was between May 5, 1987 and 1988. Because these documents prove the applicant's residence in the United States after that period, they are not relevant documents for this proceeding.

On March 3, 2006 the director issued a Notice of Intent to Deny (NOID) to the applicant. In her NOID, the director stated that the affidavits submitted with the application were not deemed credible. In saying this she stated that the affidavits the applicant submitted were not submitted with proof that the affiants had direct personal knowledge of the events and circumstances of the applicant's residency. She stated that the credible affidavits are those submitted with documents identifying the affiant, proof that there was a relationship between the affiant and the applicant, and proof that the affiant was in the United States during the requisite period. Here, the director found the affidavits submitted by the applicant did not meet these criteria. The director granted the applicant 30 days within which to submit additional documents in support of her application.

In response to the director's NOID, the applicant submitted the following documents:

- A second letter from [REDACTED] that was notarized on March 27, 2006. In this letter, the declarant states that the applicant was a babysitter for her on dates that are consistent with what the applicant showed on her Form I-687. Here, though the declarant states that the applicant worked for her, she does not note whether there were periods of time during that employment when she did not see the applicant. She also fails to indicate how she knows the applicant's start and end dates as her employee. Because this declarant does not claim to have met the applicant before January 1, 1982, this letter does not carry any weight in establishing that she entered before that time. Because of its lack of detail, this letter carries minimal weight in establishing that the applicant resided in the United States from December 1985 until the end of the requisite period.
- A notarized letter from [REDACTED] that was notarized March 27, 2006. The declarant indicates he is associated with the Spanish American Gospel Foundation in New York. In this letter he states that the applicant was a member of the church from 1981 until 1993. He states that his church assisted the applicant in obtaining employment with [REDACTED] in Corona New York from May 1981 until August 1985. He also states that the applicant worked for a babysitter from [REDACTED] in Ozone Park, New York from December 1985 until April 1989. This letter does not state the source of its

knowledge regarding the applicant's start date. Further, this letter is not consistent with the either of the applicant's Forms I-687, where she did not indicate that she was ever a member of the Spanish American Gospel Foundation.

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 application. 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).

The director denied the application on June 21, 2006. In her Notice of Decision, the director noted that her office received a timely response to her NOID. However, she stated that the affidavits the applicant submitted were not credible or amenable to verification. In saying this, the director stated that the affidavits from [REDACTED] and [REDACTED] did not meet the criteria for credible affidavits. She stated that these criteria included documents identifying the affiant, proof that there was a relationship between the applicant and the affiant and proof that the affiant was in the United States during the requisite period. She went on to say that because the affidavits submitted by the applicant were lacking with regards to these criteria she failed to meet her burden of proof and therefore did not overcome the director's reasons for denial as stated in her NOID.

On appeal, the applicant submits a letter and additional evidence in support of her application. Details of these documents are as follows:

- A letter from the applicant that is dated July 12, 2006. In this letter, the applicant states that she worked for [REDACTED] as a babysitter from December 27, 1985 until April 1989. She states that she is including personal documents from [REDACTED]. She goes on to say that [REDACTED] has resided in the United States since 1964 and refers to his identity documents and proof of his legal residence. She notes that [REDACTED] has resided in the United States for more than 35 years and states that he is the pastor of a community church.
- Copies of [REDACTED]'s previously submitted affidavits and a photocopy of pages of her passport issued to her in 1993 and her New York State Drivers license issued to her in 2003.
- A photocopy of an electric bill and health provider's bill proving that [REDACTED] resides at [REDACTED].
- A photocopy of a previously submitted letter from February 28, 2006 from [REDACTED] and [REDACTED] and proof of his identity and residence as follows:

- A photocopy of [REDACTED] passport
- A photocopy of a United States Immigration and Naturalization Services immigrant card showing that he was admitted as an immigrant on June 1, 1964.
- A letter from Eagle Electric dated November 10, 1983 showing that Jose V Alfaro had worked for that company for a year
- A photocopy of a letter from Angel Harp Manufacturing showing that [REDACTED] was employed by them for over 10 years as of the date of the letter, which was October 22, 1980.

It is noted here that notes in the record from a CIS officer indicate that CIS contacted affiant [REDACTED] and he was unable to verify when the applicant entered the United States.

In summary, here, the applicant has proven that affiants from whom she submitted documents resided in the United States during the requisite period. She further has submitted identity documents for two affiants. However, on both of her Forms I-687 she did not indicate either a place of employment or an address of residence from August to December of 1985. This casts doubt on whether the applicant resided in the United States continuously during the year 1985. She submitted a letter from [REDACTED] that shows she was a member of a church that she did not show she was ever a member of on her Forms I-687. This casts doubt on the credibility of this document.

In this case, 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.