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U.S. Citizenship  
and Immigration  
Services

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FILE:

Office: LOS ANGELES

Date: **OCT 07 2008**

MSC-05-127-10453

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:

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. 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 has continuously lived in the United States since March 15, 1981. The applicant states that she departed the United States from February 1988 until March 1988. The applicant states that she tried to apply during the amnesty period, but was turned away by an INS officer. The applicant states that from March 1981 until October 1988 she worked as a housekeeper and babysitter. The applicant states that she lived in Pasadena on the dates stated on her application. The applicant states that [REDACTED] hired her as a "stay home" babysitter. The applicant states that she was employed with [REDACTED] from June 1983 until December 1996 in Baldwin Park, and she returned to her home in Pasadena on her days off. The applicant states that the documents she submitted are the only proof she has. The applicant states that it is difficult or impossible for her to possess any documentation other than witness statements because of her "unlawfulness."

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. 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 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 February 4, 2005. At part #30 of the Form I-687 application where applicants are asked to list all residences in the United States since first entry, the applicant showed her first address in the United States to be in Pasadena, California from November 1981 until April 1995. At part #33, the applicant showed that during the requisite period she was employed as a housekeeper for [REDACTED] from November 1981 until June 1983. However, she failed to indicate the location of this employment. The applicant

also showed that from June 1983 until October 1988 she was employed as a babysitter for [REDACTED] in Whittier, California and [REDACTED] in Granada Hills, California.

The applicant submitted the following documentation:

- An affidavit from [REDACTED], dated February 24, 2003. The affidavit states that Mr. [REDACTED] has personal knowledge of the applicant's residence in Pasadena, California since 1981. It states that he became acquainted with the applicant when the applicant purchased clothing from him. It also states that they developed a friendship and see each other on a constant basis. However, the affidavit does not explain where Mr. [REDACTED]' clothing business was located and the name of his business. Furthermore, the affidavit does not describe the frequency of their contact in the United States during the requisite period. Given these deficiencies, this affidavit is without any probative value as evidence of the applicant's residence in the United States during the requisite period.
- An affidavit from [REDACTED], dated February 21, 2003. The affidavit states that Ms. [REDACTED] has personal knowledge of the applicant's residence in Pasadena, California since January 1981. It states that she is the applicant's neighbor and they see each other regularly. The applicant indicated on her Form I-687 that she resided at [REDACTED], Pasadena, California from November 1981 until April 1995. The affidavit provides that [REDACTED]'s current address is [REDACTED], Pasadena, California. However, the affidavit fails to indicate the date that [REDACTED] first resided at this address. Furthermore, the affidavit does not describe the frequency of their contact in the United States during the requisite period. Finally, the [REDACTED]'s assertion that she met the applicant in California in January 1981 is inconsistent with the applicant's claim that she began residing in the United States in November 1981. Given these deficiencies, this affidavit is without any probative value as evidence of the applicant's residence in the United States during the requisite period.
- An affidavit from [REDACTED], dated September 15, 1993. This affidavit states that the applicant was employed by her as a babysitter from June 1983 until October 1988. The regulation at 8 C.F.R. § 245a.2(d)(3)(i) provides that letters from employers must include the applicant's address at the time of employment and duties with the employer. Ms. [REDACTED] letter fails to comply with this regulatory guideline. Furthermore, the letter does not indicate the location where the applicant was employed. Given these deficiencies, this affidavit is without any probative value as evidence of the applicant's residence in the United States during the requisite period.
- A fill-in-the-blank affidavit from [REDACTED], dated September 14, 1993. This affidavit provides that she has personal knowledge that the applicant resided at Baldwin Park, California from June 1983 until present. However, the applicant's Form I-687 does not show a residential address in Baldwin Park, California. The applicant's Form I-687 shows that from November 1981 until April 1995 she was residing in Pasadena, California.

█'s affidavit further states that the applicant was living at her house from June 1983 until October 1988. The applicant indicated on her Form I-687 that she was employed with █ at █, Granada Hills, California. However, the applicant failed to list this address as a residence on her Form I-687. Given these discrepancies, this affidavit is without any probative value as evidence of the applicant's residence in the United States during the requisite period.

- A fill-in-the-blank affidavit from █, dated September 13, 1993. This affidavit provides that he first met the applicant in November 1981. It states that the applicant was living at his mother's home from November 1981 until June 1993 and working as a housekeeper until the applicant moved to Baldwin Park, California. However, the applicant's Form I-687 shows that from November 1981 until April 1995 she was residing in Pasadena, California. Furthermore, neither this affidavit nor the applicant's Form I-687 lists an address for her employment with █'s mother. Given these deficiencies, this affidavit is without any probative value as evidence of the applicant's residence in the United States during the requisite period.
- A declaration from █, dated June 29, 1993. This affidavit states that he has known the applicant since 1981 and she attends Sunday service on a regular basis. The regulation at 8 C.F.R. § 245a.2(d)(3)(v) provides that attestations from churches should include the seal of the organization impressed on the letter or the letterhead of the organization. The declaration from █ does not comply with this regulatory guideline. Furthermore, it does not provide the name of the church or its address, thereby making it impossible to assess if this church was located in the United States. At part #31 of the Form I-687, where applicants are asked to list their affiliations with any churches or other organizations in the United States, the applicant responded "None." Given these deficiencies, this letter is without any probative value as evidence of the applicant's residence in the United States during the requisite period.
- A document written in Spanish entitled "Contrato De Arrendamiento." This document appears to be a contract, dated October 1, 1972, between █ and █ for the lease of █, Pasadena, California. It has a notation in English that provides, "Mother and son lived in room from owner 1982." The applicant also furnished numerous Rediform rent receipts issued to █ during the requisite period. However, since the applicant failed to submit a certified English translation of the "Contrato De Arrendamiento," the AAO cannot determine whether this document supports the applicant's claim. See 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

The record shows that on September 17, 1993, the applicant was interviewed by the Immigration and Naturalization Service to determine her eligibility for CSS class membership. The applicant furnished a Form I-687 application, a Form for Determination of Class Membership in *CSS v. Meese*, and the aforementioned affidavits from █ and █

[REDACTED], and the declaration from [REDACTED]. The applicant also furnished an affidavit from [REDACTED], dated June 19, 1993. This affidavit provides that in February 1988 she drove the applicant and her son to Tijuana, Mexico. It states that in March 1988 she picked them up from Tijuana. Since purpose of this affidavit is to establish the applicant's absence from the United States, it does not offer any information on [REDACTED] relationship with the applicant during the requisite period. Therefore, this affidavit is without any probative value as additional evidence of the applicant's residence in the United States during the requisite period.

The record shows that the applicant was interviewed for temporary resident status on August 5, 2005. On December 15, 2005, the adjudication officer issued her a Form I-72, Request for Evidence. The Form I-72 requests the applicant to furnish a statement from the Social Security Administration listing the years she has worked. In regard to the applicant's corroborating affidavits, the Form I-72 requests the applicant to furnish evidence that the affiants were present in the United States during the period they have sworn to in their affidavits; a copy of the affiants' identification documents; the affiants' current addresses and phone numbers; the affiants' proof of legal status in the United States; and proof that the affiants have known the applicant. The Form I-72 notes that the affidavits must be notarized. Lastly, the Form I-72 requests the applicant to submit a Form I-693, Medical Examination of Aliens Seeking Adjustment of Status.

In response to the Form I-72, the applicant furnished a completed Form I-693 and the following documentation:

- A Social Security Administration report of her earnings for the years 1988 through 2004. This document is probative evidence of the applicant's residence in the United States in 1988.

Copies of documents that establish the identity and legal status for the following affiants: [REDACTED]'s California Driver Licenses, respectively issued March 28, 2001 and October 17, 2005, and Naturalization Certificate, dated April 1, 1998; [REDACTED]'s California Driver License, issued July 15, 2005, and the biographic page of her United States passport, issued January 23, 1998; [REDACTED]'s California Driver License, issued March 20, 1990; [REDACTED]'s California Driver License, issued April 30, 2004, and Resident Alien Card; and [REDACTED]'s California Driver License, issued December 4, 2003, and Naturalization Certificate, dated September 5, 1996.

- An affidavit from [REDACTED], dated June 11, 2004. The affidavit has attached to it copies of [REDACTED]'s California Identification Cards, respectively issued February 26, 1982 and September 28, 2005, and Naturalization Certificate, dated October 24, 2003. The affidavit states that she has known the applicant's son, [REDACTED], since he was a child. It states that [REDACTED] came to California in 1981 and he has since resided in Pasadena, California. Since this affidavit does not provide any information on the

applicant's residence in the United States during the requisite period, it is without any probative value.

On September 9, 2006, the director issued a notice to deny the application. The director found that the applicant's affidavits did not provide specific information on her entry and continuous unlawful residence in the United States. The director stated that the affidavit from [REDACTED] is inconsistent with the applicant's claim of residence in Pasadena, California from November 1981 until April 1995. The director determined that the applicant's documentation is barely credible and not sufficient to establish her eligibility. The director concluded that the applicant failed to meet her burden of proof by a preponderance of the evidence that she has resided in the United States for the requisite period.

On appeal, the applicant asserts that she has continuously lived in the United States since March 15, 1981. The applicant states that she departed the United States from February 1988 until March 1988. The applicant states that she tried to apply during the amnesty period, but was turned away by an INS officer. The applicant states that from March 1981 until October 1988 she worked as a housekeeper and babysitter. The applicant states that she lived in Pasadena on the dates stated on her application. The applicant states that [REDACTED] hired her as a "stay home" babysitter. The applicant states that she was employed with [REDACTED] from June 1983 until December 1996 in Baldwin Park, and she returned to her home in Pasadena on her days off. The applicant states that the documents she submitted are the only proof she has. The applicant states that it is difficult or impossible for her to possess any documentation other than witness statements because of her "unlawfulness."

The applicant has failed to provide credible, reliable and probative evidence of her residence in the United States during the requisite period. The applicant has been given the opportunity to satisfy her burden of proof with a broad range of evidence. *See* 8 C.F.R. § 245a.2(d)(3). The affidavits the applicant furnished are without any probative value as corroborating evidence due to their inconsistencies and lack of detail. Although the applicant submitted evidence of the affiants' identity and legal status, their affidavits remain deficient for the reasons noted. The only document that is of any probative value in this proceeding is the applicant's Social Security Administration report of her earnings for the years 1988 until 2004. However, the relevance of this document is limited to 1988 and does not cover the entire requisite period. On appeal, the applicant asserts that she has continuously resided in the United States since March 15, 1981. This date is inconsistent with her Form I-687, which provides that she has resided in the United States since November 1981. The applicant also asserts that she was employed with [REDACTED] at her home in Baldwin Park. This information is inconsistent with the applicant's Form I-687, which provides that she was employed with [REDACTED] in Granada Hills, California. Pursuant to 8 C.F.R. § 245a.2(d)(6), the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. Since the applicant's documentation is without any probative value and lacks credibility, she has not furnished sufficient evidence to meet her burden of proof in this proceeding.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, as well as 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.