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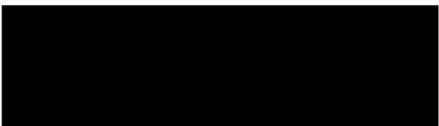
U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

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FILE:

[Redacted]  
MSC-05-130-10123

Office: NEW YORK

Date:

OCT 24 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:

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 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 noted in the decision that the applicant failed to respond to the Notice of Intent to Deny (NOID), and that therefore, the application was being denied based upon the denial in the NOID. In the NOID the director noted that the affidavits submitted by the applicant were not credible or amenable to verification. The director denied the application finding that the applicant had not met her burden of proof and that she was therefore not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, the applicant states that she is submitting a letter from a person who has known her since 1981.

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. See CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

An alien 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 alien can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the alien was maintaining residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.2(h)(1).

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."

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 of proceeding shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS), on February 7, 2005.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted the following attestations:

- A fill-in-the-blank affidavit dated January 6, 2006 from [REDACTED] in which she stated that she and the applicant attended Juma prayers on Fridays. She also listed the applicant's address as [REDACTED] Brooklyn, New York from November of 1981 to May of 1994. Here, the affiant fails to specify when she met the applicant and the frequency with which she saw and communicated with the applicant during the requisite period. Although the affiant claims to have attended Juma prayers with the applicant on Fridays, when asked to list her affiliations and associations with churches and religious organizations, the applicant failed to list any. There has been no explanation given for this inconsistency. It is further noted that there is no evidence to demonstrate the affiant's first hand knowledge of the applicant's whereabouts or the circumstances of her residence during the requisite period. Because the affidavit conflicts with statements made by the applicant and because it is significantly lacking in detail, it can be afforded only minimal weight in establishing that the applicant resided in the United States during the requisite period.
- A fill-in-the-blank affidavit dated January 7, 2005 from [REDACTED] in which she stated that the applicant has been braiding her hair. She also listed the applicant's address as [REDACTED] Brooklyn, New York from November of 1981 to May of 1994. Here, the affiant fails to specify when she met the applicant and the frequency with which she saw and communicated with the applicant during the requisite period. It is further noted that there is no evidence to demonstrate the affiant's first hand knowledge of the applicant's whereabouts or the circumstances of her residence during the requisite period. Because the affidavit is significantly lacking in detail, it can be afforded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

The director stated that the applicant had failed to respond to the NOID; however, the record of proceeding contains a response from her date stamped received on September 12, 2005. In response to the NOID the applicant submitted a letter from the Medical Staffing Services, LLC of Brooklyn, New York, bearing her name and dated April 17, 1983. The letter indicates that the applicant received a normal physical exam on April 15, 1983. Although this may be some evidence of the applicant's presence in the United States in April of 1983, it is insufficient to demonstrate her residence before January 1, 1982 or her continuous residence during the requisite period.

On appeal, the applicant submits an affidavit dated February 13, 2006 from [REDACTED] in which she states that she has known the applicant since approximately 1981. Here, the affiant fails to indicate under what circumstances she met the applicant, the frequency with which she saw the applicant, or any other detail that would lend credence to her claimed knowledge of the

applicant and the applicant's residence in the United States during the requisite period. Because the declaration is significantly lacking in detail, it can be afforded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

In the instant case, the applicant has failed to provide sufficient, credible and probative evidence to establish her continuous unlawful residence in the United States throughout the requisite period. Although the applicant claims to have resided in the United States since he was 13 years old, she has provided neither school records nor medical records to substantiate such claim. She also failed to provide any independent documentary evidence from or about any responsible adult or guardian to indicate the circumstances under which she survived in the United States during her childhood and throughout the requisite period. The attestations submitted are either not credible or are lacking in detail and therefore, can be accorded only minimal weight in establishing that the applicant resided in the United States throughout the requisite period.

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 documents with minimal probative value, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States for the requisite period 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.