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U.S. Citizenship
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Services

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FILE: [REDACTED] Office: LOS ANGELES Date: OCT 27 2008
MSC-06-101-25339

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Temporary Resident Status under Section 245A of the
Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office on your appeal. If your appeal was dismissed or rejected, your file has been sent to the National Benefits Center. You no longer have a case pending before this office. If your appeal was sustained or the matter was remanded for further action, your file has been returned to the office that originally decided your case, and you will be contacted. 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, Los Angeles. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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 did not submit sufficient evidence to satisfy her burden of proof. Therefore, the director determined the applicant was not eligible to adjust to temporary resident status pursuant to the CSS/Newman Settlement Agreements and denied the application.

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 brief through counsel and additional evidence for consideration 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).

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 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.2(d)(6).

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.* 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 has satisfied the standard of proof. See *U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that she entered the United States before 1982 and then continuously resided in the United States in an unlawful manner for the requisite period. In this case, the submitted evidence is relevant, probative and credible.

On January 9, 2006, the applicant filed her I-687 Application. The record includes the following documents that are relevant to her claim that she resided in the United States during the requisite period:

- A letter from the Our Lady of Malibu Church that states that the applicant attended mass and services from 1984 to 1988.
- A declaration from [REDACTED], who submits a photocopy of her California Driver's License and evidence of her residence in the United States during the requisite period and states that the applicant resided in the United States from December 1981

until the end of the requisite period, residing with her for part of that time.

- A declaration from [REDACTED] who submits a photocopy of her California Driver's License and states that she personally knows that the applicant entered the United States in 1981 and then continuously resided in the United States until the end of the requisite period.
- A declaration from [REDACTED] who submits a photocopy of his California Driver License with his declaration and states that he met the applicant in May 1983 in the United States. He attests to her residence in the United States from 1983 until the end of the requisite period.
- A declaration from [REDACTED] who submits the identity page of her United States passport and states that she has known the applicant and her mother since December 1981, when they met in the San Fernando Valley of California. She states that the applicant resided in the United States since that time and until 1989.
- A letter from the law offices of [REDACTED], who states that the applicant was a minor in the custody of her mother, [REDACTED], during the requisite period.

The applicant submitted several other documents which make reference to her residing in California after the requisite period. These documents are not relevant to the applicant's claim.

On October 20, 2006, the director issued a denial notice. In the denial, the director concluded that the applicant had failed to submit sufficient evidence to establish her continuous, unlawful residence in the United States during the requisite period.

On appeal, the applicant's counsel asserts that the evidence submitted by the applicant satisfied her burden of proof. Counsel argues that the applicant resided with her mother, Frida Dominguez, during the requisite period and provides evidence that the applicant's mother was granted lawful permanent residency pursuant to the Legal Immigration Family Equity (LIFE) Act of 2000.

The applicant also submits a declaration from her mother in support of her application. In this declaration, the applicant's mother states that she is a Newman Class Member who was front-desked during the original legalization filing period. The applicant's mother details both her own and the applicant's residence in the United States during the requisite period.

The director did not deny the application based on the applicant's failure to demonstrate class membership. Thus, the special provisions of the CSS/Newman Settlement Agreements which relate to cases in which the director finds that an applicant was not able to demonstrate class membership do not apply.

The declarations submitted by the applicant appear to be credible and amenable to verification in that each include contact telephone numbers and/or contact addresses.

The applicant's testimony in a sworn statement in the record and other evidence in the record is consistent with information in the record regarding her residence in the United States during the requisite period. Further, that the applicant's mother, which whom the applicant has consistently stated that she resided during the requisite period, was granted permanent resident status under the LIFE Act and presented evidence of her own residence in the United States during the requisite period lends credibility to the applicant's claimed residence in the United States during that period.

The director has not established that the information on the many supporting documents in the record was inconsistent with the applicant's testimony or with the claims made on her I-687 Application; that any inconsistencies exist *within* the claims made on the supporting documents; or that the documents contain false information. As stated in *Matter of E-M-*, 20 I&N Dec. at 80, when something is to be established by a preponderance of the evidence, the proof submitted by the applicant has to establish only that the asserted claim is probably true. That decision also states that, under the preponderance of evidence standard, an application may be granted even though some doubt remains regarding the evidence. *Id.* at 79. The documents that have been furnished in this case may be accorded substantial evidentiary weight and are sufficient to meet the applicant's burden of proof of residence in the United States for the requisite period.

The applicant has established by a preponderance of the evidence that she entered the United States before January 1, 1982 and maintained continuous, unlawful residence for the duration of the requisite period. Consequently, the applicant has overcome the particular basis of denial cited by the director.

The appeal will be sustained. The director shall continue the adjudication of the application for temporary resident status.

ORDER: The appeal is sustained.