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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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FILE: [REDACTED] Office: LOS ANGELES Date: **SEP 02 2008**
MSC-05-229-12224

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.

for Michael T. Kelly
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, on July 26, 2005 (together, the I-687 Application). 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 noting that the applicant's father's death certificate appeared to have been altered and that the transcripts submitted did not confirm that the applicant was home schooled in the United States. The director denied the application as 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, counsel submitted a Form I-694 Notice of Appeal of Decision Under Section 210 or 245A and a brief. In his appeal brief, counsel argues that the discrepancies in the record of proceeding should be considered "minor inconsistencies." Counsel states that the applicant has not altered her father's death certificate. Counsel also addresses the director's concerns regarding the applicant's transcripts. On appeal, counsel argues that the applicant was denied due process of law because the director did not state why the applicant's statements and the affiants' statements were insufficient to meet her burden of proof. Finally, counsel argues that the applicant has proven her case by the preponderance of the evidence. As of this date, the AAO has not received any additional evidence from the applicant. Therefore, the record is complete.

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 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).

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, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 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. *See* 8 C.F.R. § 245a.2(d)(6). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

Even if the director has some doubt as to the truth, if the applicant 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 (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 before 1982 and continuously resided in the United States for the requisite period.

The applicant has provided four affidavits; one letter; confirmation of employment beginning on January 16, 2006; a copy of the applicant's birth certificate; a copy of the applicant's passport; a copy of the applicant's B-2 visas issued on October 6, 2000 and on June 11, 2001; and copies of the applicant's California identification card issued on May 14, 2002; two voided checks listing the applicant's father's name and an address included in the Form I-687; a copy of a certification signed by [REDACTED] dated August 1, 1980; and photographs. The applicant's California identification card, birth certificate, and passport are evidence of the applicant's identity, but do not demonstrate that she entered before January 1, 1982 and resided in the United States for the requisite period.

Some of the evidence submitted indicates that the applicant resided in the United States after the requisite period and is not probative of residence before that date. The following evidence relates to the requisite period:

- A notarized affidavit from [REDACTED] dated November 30, 2005. The affiant states that he was acquainted with the applicant and her deceased father since the affiant "arrived in the United States during the 80s." The affiant also states that both the applicant and her father lived in Los Angeles and San Jose, California. Although the affiant states that he has known the applicant since the 80s, the statement does not supply enough details to lend credibility to an at least 16-year relationship with the applicant. For instance, the affiant does not indicate when in the 80s he met the applicant and her father, under what circumstances he met the applicant and her father in the 80s, how he dates his initial meeting with the applicant and her father, or how frequently he had contact with the applicant and her father. Given these deficiencies, this affidavit has minimal probative value in supporting the applicant's claims that she entered the United States prior to January 1, 1982 and resided in the United States for the entire requisite period.
- A notarized affidavit from [REDACTED] dated November 30, 2005. The affiant states that she personally knows and has been acquainted with the applicant in the United States. The affiant includes two addresses consistent with the applicant's Form I-687. The affiant also states that she became acquainted with the applicant on several occasions including family gatherings like birthdays, Christmas and reunions where her deceased father, [REDACTED], would bring [the applicant] along with him between the years 1980 – 1987." This statement is inconsistent with the applicant's statement that she first arrived in the United States in 1981. 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, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Although the affiant states that she has known the applicant since the 1980, the statement does not supply enough details to lend credibility to a 25-year relationship with the applicant. For instance, the affiant does not indicate how she dates her initial meeting with the applicant, or how frequently she had contact with the applicant. Given these deficiencies, this affidavit has minimal probative value in supporting the applicant's claims that she entered the United States prior to January 1, 1982 and resided in the United States for the entire requisite period.

- A notarized affidavit from [REDACTED] dated November 24, 2005. The affiant states that she lives in the Philippines and that the applicant “is [her] neighbor.” The affiant also states that the applicant and her father left for the United States in 1981 and that they lived in the United States from “1980 until 1987.” The dates provided by the affiant are inconsistent. The affiant states that the applicant lived in the United States from 1980 to 1987, but did not leave for the United States until 1981. 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, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Although the affiant states that she is the applicant’s neighbor, the applicant lived in the United States in 2005. The affiant does not provide dates for the when the applicant and her father were the affiant’s neighbors. In addition, the affiant does not indicate how she dates the applicant’s trip to the United States. Further, the affiant provides no specific information about the applicant’s residence and whereabouts in the United States. Given these deficiencies, this affidavit has minimal probative value in supporting the applicant's claims that she entered the United States prior to January 1, 1982 and resided in the United States for the entire requisite period.
- A notarized affidavit from [REDACTED] dated November 24, 2005. The affiant states that he is a resident of the Philippines and has personally known the applicant “for more than forty years.” However, according to the applicant’s passport, the applicant was born on November 21, 1970 and was only 35 years old when the affiant’s affidavit was notarized. The affiant also states that the applicant and her father “went to the United States in 1980.” As mentioned above, this statement is inconsistent with the applicant’s statement that she first entered the United States in 1981. 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, and attempts to explain or reconcile such inconsistencies, absent

competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Although the affiant states that he has known the applicant for more than 40 years, the statement does not supply enough details to lend credibility to a long standing relationship with the applicant. For instance, the affiant does not appear to know the applicant's age. In addition, the affiant does not indicate how he dates the applicant's trip to the United States. Further, the affiant provides no specific information about the applicant's residence and whereabouts in the United States. Given these deficiencies, this affidavit has minimal probative value in supporting the applicant's claims that she entered the United States prior to January 1, 1982 and resided in the United States for the entire requisite period.

- A copy of a certification of representation for the applicant's father signed by [REDACTED] and dated August 1, 1980. The date on this certification is inconsistent with the applicant's letter dated December 8, 2005 in response to the director's notice of intent to deny. In her letter, the applicant stated that she and her father entered California in 1981 without inspection. On appeal, counsel makes the same statement in his brief. The record of proceeding contains notes from the applicant's October 16, 2006 interview which state that the applicant indicated during the interview that her father entered the United States in 1980 with a visa and without the applicant. The notes also state that the applicant indicated that her father picked her up in Mexico and she then entered the United States in October 1981 without inspection. The record of proceeding contains no evidence that the applicant's father arrived in 1980 with a visa and none of the affiants mention this. Further, the applicant does not indicate how she traveled to meet her father at 10 years old. 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, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Given these deficiencies, this document has no probative value in supporting the applicant's claims that she entered the United States prior to January 1, 1982 and resided in the United States for the entire requisite period.
- A letter from [REDACTED] principal of [REDACTED] Memorial College dated October 23, 2006. The letter is on school letterhead, but it is not notarized. The declarant states that the applicant was a product of the school's "correspondence education (distance learning) program where she graduated elementary and high school." The declarant states that the applicant was accepted into the program because the school was convinced that the applicant was "capable of passing and finishing the correspondence education without supervision after carefully evaluating [the applicant's] elementary grades before she left for the United States in October of 1981." The declarant also states that the applicant "was asked to be physically present to take the government required exam National College Entrance Examination (1986) on [the

applicant's] last year of correspondence school to test her adaptability and ability to go through college." The record of proceeding contains transcripts for the applicant from [REDACTED] Memorial College. The home address included on the transcripts is in the Philippines and the declarant does not state where the applicant's coursework was mailed to or if the school received correspondence from the applicant mailed from the United States. The AAO notes that the transcripts do not mention that the applicant was in the school's correspondence education program. Given these deficiencies, this document has minimal probative value in supporting the applicant's claims that she entered the United States prior to January 1, 1982 and resided in the United States for the entire requisite period.

- Two voided checks listing the applicant's father's name and an address consistent with the applicant's Form I-687. These checks are blank and do not provide any date. There is no evidence that these checks were printed during the requisite time period. Given these deficiencies, these documents have no probative value in supporting the applicant's claims that she entered the United States prior to January 1, 1982 and resided in the United States for the entire requisite period.
- Photocopies and original photographs. Most of the photographs are blurry and appear to have been damaged by water. The photographs that are clear do not establish that the applicant was present in the United States during the requisite period. The AAO is unable to date these photographs or determine that the photographs were taken in the United States. Given these deficiencies, these photographs have no probative value in supporting the applicant's claims that she entered the United States prior to January 1, 1982 and resided in the United States for the entire requisite period.

The remaining evidence in the record is comprised of the applicant's statements and application forms, in which she claims to have entered the United States in October 1981 without inspection. The applicant has not submitted any additional evidence in support of her claim that she was physically present or had continuous residence in the United States during the entire requisite period or that she entered the United States in 1981. As noted above, to meet her burden of proof, the applicant must provide evidence of eligibility apart from her own testimony. In this case, her assertions regarding her entry are not supported by sufficient evidence in the record.

The director issued a notice of intent to deny on November 17, 2005. The director denied the application for temporary residence on December 2, 2006. In denying the application, the director found that the applicant failed to establish that she entered the United States prior to January 1, 1982 or that she met the necessary residency or continuous physical presence requirements. In addition, the director noted that the applicant's father's death certificate appeared to have been altered and that the transcripts submitted did not confirm that the applicant was home schooled in the United States. Thus, the director determined that the applicant failed to meet her burden of proof by a preponderance of the evidence.

In his appeal brief, counsel argues that the discrepancies in the record of proceeding should be considered “minor inconsistencies.” Counsel states that:

although there [are] some discrepancies in the dates appearing on the [applicant’s] I-687 application, [the applicant’s] letter dated December 8, 2005, and [the] affidavits of disinterested parties, as against [the applicant’s] oral testimony during the interview on October 16, 2006, they are not material to the issue and must be considered as minor inconsistencies which should not be treated against the [applicant], but rather, must work in favor of the [applicant].

The record of proceeding contains numerous inconsistencies and contradictions. On appeal, counsel does not provide any independent objective evidence that resolves the inconsistencies in the record. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Neither does counsel provide an explanation as to how the discrepancies mentioned “work in favor of the [applicant].” The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

In his appeal brief, counsel states that the applicant has not altered her father’s death certificate. The record of proceeding contains a photocopy of the applicant’s father’s death certificate. Although the certificate includes a stamp stating that it is a “certified photo copy” and is signed and dated by the City of Lipa civil registrar, the applicant has not submitted the original certified photocopy of the death certificate. Therefore, the AAO is unable to determine if the document is a true photocopy of the death certificate.

On appeal, counsel also addresses the director’s concerns regarding the applicant’s transcripts. Counsel states that [redacted] is an owner/incorporator of the [redacted] Memorial College and is both the principal of the elementary school and registrar for both the elementary school and high school. Counsel explains that [redacted]’s dual role is why both the elementary school and high school transcripts were issued and signed by [redacted]. In addition, counsel states that in order for the school to save money on mailing costs, it sent the applicant’s mail to her mother in the Philippines. The applicant’s mother was then responsible for forwarding the applicant’s mail to the United States. Although counsel addresses the director’s concerns, counsel does not provide independent evidence confirming his statements on appeal. The record of proceeding contains a letter from Mr. Aguila. However, [redacted] does not corroborate counsel’s explanation on appeal. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

On appeal, counsel argues that the applicant was denied due process of law because the director did not state why the applicant’s statements and the affiants’ statements were insufficient to meet

her burden of proof. Although counsel argues that the applicant's rights to procedural due process were violated, he has not shown that any violation of the regulations resulted in "substantial prejudice" to her. *See De Zavala v. Ashcroft*, 385 F.3d 879, 883 (5th Cir. 2004) (holding that an alien "must make an initial showing of substantial prejudice" to prevail on a due process challenge). The applicant has fallen far short of meeting this standard. A review of the record and the adverse decision indicates that the director properly applied the statute and regulations to the applicant's case. Counsel's primary complaint is that the director denied the application. As previously discussed, the petitioner has not met her burden of proof and the denial was the proper result under the settlement agreements. Accordingly, counsel's claim is without merit.

Finally, counsel argues that the applicant has proven her case by the preponderance of the evidence. The AAO has noted that several of the affidavits and other documents submitted are inconsistent with the applicant's statements and fail to meet the applicant's burden of proof. As noted above, 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. Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that he is eligible for the benefit sought.

In this case, the absence of sufficient credible and probative documentation to corroborate the applicant's claim of continuous residence for the requisite period seriously detracts from the credibility of her claim. There are numerous discrepancies and inconsistencies in the evidence submitted by the applicant. 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 lack of credible supporting documentation, it is concluded that the applicant 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