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U.S. Citizenship
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FILE: [REDACTED]
MSC-05-309-11412

Office: NEW YORK

Date: **SEP 04 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:

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 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, counsel asserts that the director erred in denying the applicant's I-687 application and asserts that the applicant has submitted sufficient evidence to substantiate her claim of eligibility for the immigration benefit sought. She submits a statement from the applicant and an affidavit on appeal.

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.

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 August 5, 2005. The applicant indicated at part # 30 of the I-687 application that her place of residence was [REDACTED], Brooklyn, New York from September of 1981 to February of 1984; and [REDACTED] in Dix Hills, New York, from February of 1985 to June of 1987.

The applicant provided the following attestations in response to the Notice of Intent to Deny (NOID):

- An affidavit from [REDACTED] dated December 8, 2005 in which she stated that the applicant resided at her rental property at [REDACTED] in East Northport, New York, from 1981 to 1984. This statement is inconsistent with the applicant’s statement on her I-687 application at part #33 where she indicated that she resided at [REDACTED] in Brooklyn, New York, from September of 1981 to February of 1984. This inconsistency calls into question the credibility of the affiant’s statements. Doubt cast on any aspect of the applicant's proof may 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 lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Given this discrepancy, the affidavit can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

- An affidavit from [REDACTED] dated December 13, 2005 in which she indicated that she had personal knowledge of the applicant residing at [REDACTED] New York from January of 1982 to December of 1984, and that she rented an apartment at the same address. Here, this statement is inconsistent with the statement made by [REDACTED] and is also inconsistent with what the applicant indicated on her I-687 application at part #33 where she stated that she resided at [REDACTED] in Brooklyn, New York from September of 1981 to February of 1984.
- An affidavit from [REDACTED] in which he indicated that the applicant lived in Dix Hills, New York from March of 1985 to June of 1987, and that he knows her from living in the community. Here, the affiant fails to state where and when he met the applicant, the frequency with which he saw and communicated with the applicant during the requisite period, or any other detail that would lend credence to his 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.

The applicant also submitted the following employment attestations:

- An affidavit from [REDACTED] in which she stated that she employed the applicant at her place of residence, then being [REDACTED] in Dix Hills, New York, from February of 1985 to June of 1987.
- An affidavit from [REDACTED] in which she stated that she employed the applicant from September of 1987 to June of 1990 and that during that time, the applicant resided with her.

The employment affidavits do not conform to regulatory standards for attestations by employers. Specifically, the affiants do not specify the type of employment the applicant was engaged in or the number of hours she worked. 8 C.F.R. § 245a.2(d)(3)(i). Here, the affiants fail to indicate whether the employment information was taken from company records. The record does not contain copies of personnel records, pay statements or cancelled checks that pertain to the requisite period sufficient to corroborate the assertions made by the affiants. Because the

affidavits do not conform to regulatory standards, they can be accorded little weight in establishing that the applicant resided in the United States during the requisite period.

In denying the application the director noted that the affidavits submitted did not appear to be credible and were not amenable to verification. The director noted that counsel affirmed the information contained in the applicant's I-687 application during the interview with immigration officials. The director also determined that the evidence was not sufficient to overcome the grounds for denial detailed in the NOID.

On appeal, counsel asserts that the director erred in denying the applicant's I-687 application considering the law and facts of the case. The applicant submits a statement in which she asserts that she has continuously resided in the United States since September of 1981 and that she has been employed as a housekeeper and office cleaner from 1981 through 1990, and that she is eligible for the immigration benefit sought. The applicant restates the residence and employment states that she made in her I-687 application. The applicant submits the following attestation:

- An affidavit from [REDACTED] in which she states that she has known the applicant since November of 1983 and that she first met the applicant at their family reunion in Brooklyn, New York. The affiant also stated that due to the closeness of family, she sees the applicant at least three times per month and that they also attend holiday functions and gatherings for special occasions. Although this affidavit serves as some evidence of the applicant's presence in the United States since November of 1983, it is insufficient to establish her continuous residence throughout the requisite period.

In the instant case, the applicant has failed to provide sufficient, probative evidence to establish her continuous unlawful residence in the United States throughout the requisite period. She has failed to overcome the grounds for the director's denial. Although counsel claims that the director erred in denying the I-687 application, she has not identified specifically any erroneous conclusion of law or statement of fact, as required by 8 C.F.R. § 103.3(a)(1)(v). The attestations submitted by [REDACTED] and [REDACTED] are inconsistent with each other and with statements made by the applicant on her I-687 application. The employment affidavits do not conform to regulatory standards for attestations by employers. The attestations are also lacking in detail.

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 attestations with minimum 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.