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

[redacted]

FILE: [redacted] Office: NEW YORK Date: AUG 30 2007

MSC-05-278-13012

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. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

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, and that decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined the applicant had not provided evidence that was sufficient to establish that she continuously resided in the United States for the requisite period. The director went on to explain that this finding was made because the documents submitted did not establish that she had entered in the United States before January 1, 1982 and resided in a continuous unlawful status throughout the requisite period. Though the applicant submitted a letter of disagreement as a response to the director's NOID, as well as additional evidence, the director stated that after considering these documents, the applicant had still not met her burden of establishing that she had maintained continuous residence in the United States during the requisite period. Specifically, in her notice of decision, the director noted that, to corroborate her entry without inspection the applicant did not submit "corroborative evidence that you entered such as documents showing a valid entry to the United States at that time." It is noted that those who enter without inspection do so without being issued documents showing valid entry into the United States. The director also noted that the affidavits submitted by the applicant did not contain the affiants' identity documents nor did they offer proof that the affiants were in the United States during the requisite period and stated that there were inconsistencies in the record regarding the applicant's employment during the requisite period. Lastly, the director notes a sworn statement given by the applicant on January 17, 2006 in which she stated that she was absent from the United States from October 1987 to December 1987. As a result, the director denied the application.

On appeal, the applicant's attorney submits a notice of appeal. This notice states that documents previously submitted establish, by a preponderance of the evidence, that she maintained continuous residence in the United States during the requisite period. Further, the notice points out that the director erred in stating that the applicant's 1989 absence, which was for more than 45 days, caused a break in her having maintained continuous residence as it occurred after May 4, 1988 and therefore was not during the requisite period.

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 Immigration and Nationality Act (Act), 8 U.S.C. § 1255a(a)(2).

An applicant applying for adjustment to temporary resident status must 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).

For purposes of establishing residence and presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the alien attempted to file a completed Form I-687 application and fee or was caused not to timely file, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

An alien applying for adjustment of status 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).

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 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 two issues in this proceeding are: whether the applicant has furnished sufficient credible evidence to demonstrate that she maintained continuous residence in the United States from prior to January 1, 1982 through the date she attempted to file a Form I-687 application during the original legalization application period; and whether the applicant has furnished the same to establish that she maintained continuous physical presence in the United States from November 6, 1986 through the date she attempted to file her Form I-687. Here, the submitted evidence is not relevant, probative, and credible.

The record shows that the applicant first completed a Form I-687, Application for Status as a Temporary Resident to establish Catholic Social Services (CSS) class membership, signing this Form I-687 on June 22, 1990. She also submitted a Form I-687, Application for Status as a Temporary Resident and a Form I-687, CSS/Newman Class Membership Worksheet, on July 5, 2005. The applicant signed both of these applications under penalty of perjury certifying that the information she provided is true and correct.

Part 16 of the applicant's most recent Form I-687, submitted in 2005 pursuant to the CSS/Newman settlement agreements, asks the applicant to list the date she last entered the United States. The applicant responded that she last entered the United States on October 20, 1981. Part 30 requests the applicant to list her residences in the United States since her first entry. The applicant responded that during the requisite period she resided at: 32-32 [redacted] from October 1981 to January 1986 and then at 88-37 [redacted] from January 1986 to June 1993. Part 32 of the applicant's Form I-687 requests the applicant to list her absences from the United States since entry. The applicant responded that she went back to Colombia from August 1987 to September 1987 for a family emergency. Part 33 of this application requests the applicant to list her employment since entry. The applicant responded that during the requisite period she was self employed. She does not provide an address for her employment.

The applicant's Form I-687 application submitted to establish class membership in 1990 provides that she last entered the United States on October 20, 1981. This is consistent with the date the applicant provided when asked the same question on the Form I-687 she submitted pursuant to the CSS/Newman settlement agreements in 2005.

The applicant's Form I-687 application submitted to establish class membership in 1990 provides that she resided at: 32-32 [redacted] from October 1981 to December 1985 and then at 88-37 [redacted] from January 1986 the date she signed the form in 1990. This is consistent with the information on the applicant's Form I-687 application, submitted pursuant to the CSS/Newman settlement agreements in 2005.

Part 35 of the applicant's Form I-687 application submitted establish class membership in 1990 requests the applicant to list her absences from the United States since entry. The applicant responded that she had two absences. The first absence occurred from August 26, 1987 to September 25, 1987 when she went to visit her son who was sick. The second absence shown occurred in 1991, which is outside of the requisite period and is therefore not relevant to the matter at hand. It is noted that the applicant signed this document on June 22, 1990, yet listed an absence that occurred in 1991.

The information regarding this second absence is inconsistent with the applicant's Form I-687 application, filed in 2005 pursuant to the CSS/Newman settlement agreements, which states that the applicant was only absent once, in 1987. Though the 1991 absence occurred outside of the requisite period, that the applicant did not list this absence in her 2005 application where she was

asked to list all absences calls into question the validity of information provided by the applicant regarding her absences.

Part 36 of the applicant's Form I-687 application submitted establish class membership in 1990 requests the applicant to list her employment since entry. The applicant responded that during the requisite period she was employed by: [redacted] as a babysitter from December 1981 to November 1984 and then [redacted] as a housekeeper and babysitter from December 1984 to February 1990. This employment information appears to be inconsistent with the applicant's Form I-687 application, filed in 2005 pursuant to the CSS/Newman settlement agreements, which states that she was self employed during that time, without giving details of an address associated with that self-employment. However, it should be noted that on the applicant's Form G-325 she stated that she was a self-employed babysitter. Therefore, this indicates that this may not be an inconsistency.

Subsequent to filing a Form I-687 application in 1990, the applicant was interviewed on June 22, 1992 by an INS officer to establish her class membership. During this interview the applicant stated that her first entry into the United States occurred on November 20, 1981. This is inconsistent with both the applicant's 1990 and 2005 Forms I-687 that state that first entered on October 20, 1981.

The record contains a sworn statement, signed on January 17, 2006 that states the applicant was absent from the United States from October 1987 to December 1987 when she visited Colombia. Though the applicant does not provide the exact dates of this absence, this statement indicates that the absence would have occurred for 31 to 91 days. It is noted that these dates conflict with the dates provided by the applicant regarding this same absence in her testimony in 1992 when she was interviewed to establish class membership and with the dates the applicant provided on her 1990 Form I-687.

Information provided by the applicant on her two Form I-687 applications and assertions made in her sworn statement are materially inconsistent regarding her absences both during and after the requisite period.

Other evidence in the record indicates the following:

- The applicant's Form I-485, which asks the applicant to list all of her children in Part 3B. Here, she does not list any children. This is not consistent with the applicant's claim of having left the United States in 1987 to visit her son who was ill. It is also inconsistent with the applicant's 1990 Form I-687, which lists two children. It is noted that changes were made to the Form I-485 in red pen. After all changes were made by an interviewing CIS officer, the section asking the applicant to list all of her children remained blank.

- The applicant's Form G-325 lists the applicant's employer as "Self-employed" and her occupation as "Babysitter" establishing that the applicant has represented on a form that she is a self-employed babysitter. This would indicate that the applicant's employment as represented in both Forms I-687, one of which states she is self-employed and the other of which states that she was employed as a babysitter may be consistent.

Further evidence submitted by the applicant in support of her claim of having maintained continuous residence in the United States during the requisite period includes the following:

- An untranslated document [redacted] institute for Social Security from August 27, 1987 noting a child patient. Because the petitioner failed to submit certified translations of the documents, it cannot be determine whether the evidence supports the petitioner's claims. *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.
- An untranslated document noting the medical history of [redacted] who was eight (8) years old on August 26, 1987 when he was admitted to the IVSS for asthma. Because the petitioner failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the petitioner's claims. *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.
- A translated letter written by a doctor named [redacted] from the Clinic of Specializations in [redacted] stating that a child, [redacted] was hospitalized with pneumonia and that the applicant, whom the letter specifies is that child's mother, was present at the clinic from August 26, 1987. It is noted that the applicant's sworn statement indicates that she was in Colombia rather than Venezuela and that the absence that occurred as a result of this illness was from October to December of 1987.
- A letter from [redacted] asking [redacted] to confirm her flight information from a flight that went from New York to [redacted] on August 26, 1987. It is noted that though this is a letter requesting official airline records, this letter contains the following sentence, "If yoy [sic] nee [sic] any further information concerning a [sic] my son pleased [sic] do not necessitate [sic] to contact me at the following."
- A reply to the previously noted letter on letterhead from Eastern Airlines stating that because of their bankruptcy and legal requirements regarding retention of records, records of the applicant's flight have been destroyed. This letter was signed by L.C. Sanchez, a supervisor for Refund Accounting.
- A notarized letter from [redacted] dated June 20, 1992 stating that he lived with the applicant at 32-32 [redacted] from 1981 until 1985. There is no phone number for [redacted] on this letter. It is noted that though this affidavit does not explicitly state how [redacted] first met the applicant, it does indicate that both were in the United States from 1981 until 1985 and that [redacted] was aware of the applicant's presence in the United States before January 1, 1982.

- A notarized letter from [redacted] and [redacted] signed on July 15, 1992 stating that the applicant worked for them from December 1984 until February of 1990 as a housekeeper and baby sitter and that she lived at 88-37 [redacted] at the time they signed this letter on July 15, 1992. This letter does not contain contact information for [redacted].
- A notarized letter from [redacted] and [redacted] signed on June 21, 1992 stating that the applicant worked as a babysitter for [redacted] from December 1981 until November 1984 and that she lived at 32-32 [redacted] that time. This letter does not contain contact information for [redacted].
- An affidavit from [redacted] notarized on May 19, 1992 stating that the affiant met the applicant "in December at my house." This affidavit also provides that the affiant has known the applicant since the month of June of 1982 and that the longest period of time for which he has not seen the applicant since that time was one month. The affiant states that the applicant lives in Elmhurst, New York but, when asked to provide an address for the applicant, he does not indicate one. This affidavit provides an address but no phone number at which he can be contacted.
- An affidavit from [redacted] that was notarized on June 20, 1992. This affidavit states that the affiant met the applicant in Central Park in June 1983 and that the longest period of time for which he has not seen the applicant since that time was five (5) weeks. The affiant states that the applicant lives in Elmhurst, New York. This affidavit provides an address but no phone number at which he can be contacted.
- An affidavit from [redacted] that was notarized on June 6, 1992. This affidavit states that the affiant met the applicant at "the Christmas party" on December 1981. She indicates longest period of time for which she has not seen the applicant since that time was one month. The affiant states that the applicant lives in Elmhurst, New York but, when asked to provide an address for the applicant, she does not indicate one. This affidavit provides an address but no phone number at which she can be contacted.
- An affidavit from [redacted] that was notarized in June of 1992. This affidavit states that the affiant met the applicant at "the park" in August of 1984. He indicates longest period of time for which he has not seen the applicant since that time was eight (8) years and two (2) months. The affiant states that the applicant lives in Elmhurst, New York but, when asked to provide an address for the applicant, he does not indicate one. This affidavit provides an address but no phone number at which he can be contacted.
- An affidavit from [redacted] that was notarized on August 6, 1992. This affidavit states that the affiant met the applicant when she started working at her present job at 80-09 Roosevelt in September of 1986. She indicates longest period of time for which he has not seen the applicant since that time one month. The affiant states that the applicant lives in [redacted] but, when asked to provide an address for the applicant, she does not indicate one. This affidavit provides an address but no phone number at which she can be contacted.
- A letter from [redacted] stating that she has known the applicant since December, 1980. This letter provides [redacted] phone number and address. It is noted that the applicant states she did not enter the United States until October 20, 1981. Therefore, it

is not possible that [redacted] met the applicant in the United States before that date. Further, this letter does not establish that [redacted] was in the United States during the requisite period.

- A letter dated January 4, 2001 from [redacted] stating that he has known the applicant since December, 1980. This letter provides [redacted]'s phone number. It is noted that the applicant states she did not enter the United States until October 20, 1981. Therefore, it is not possible that [redacted] met the applicant in the United States before that date. Further, this letter does not establish that [redacted] was in the United States during the requisite period.
- A letter dated January 4, 2001 from [redacted] stating that she has known the applicant since December, 1980. This letter provides [redacted] phone number and address. It is noted that the applicant states she did not enter the United States until October 20, 1981. Therefore, it is not possible that [redacted] met the applicant in the United States before that date. Further, this letter does not establish that [redacted] was in the United States during the requisite period.
- A letter dated December 30, 2000 from [redacted] stating that she has known the applicant since 1980. This letter provides [redacted] phone number and address. It is noted that the applicant states she did not enter the United States until October 20, 1981. Therefore, it is not possible that [redacted] met the applicant in the United States before that date. Further, this letter does not establish that [redacted] was in the United States during the requisite period.
- A letter dated January 2, 2001 from [redacted] stating that he has known the applicant for twenty-one (21) years. This letter provides [redacted] phone number and address in Florida. It is noted that the applicant states she did not enter the United States until October 20, 1981. Therefore, it is not possible that [redacted] met the applicant in the United States before that date. Further, this letter does not establish that [redacted] was in the United States during the requisite period.
- An affidavit from [redacted] notarized on May 28, 1992. In this affidavit, the affiant states she met the applicant in May of 1984 and that the longest she has ever not seen the applicant is for one (1) month. Though the affiant indicates how she met the applicant, this section of the affidavit is not legible. This affiant has not indicated where the applicant lives when asked to do so. There is no phone number indicated for the affiant on the affidavit.
- A signed letter from [redacted] dated January 3, 2001 that states that [redacted] has known the applicant for eleven (11) years and then states that he has known her since 1980. It is noted that 1980 occurred twenty-one (21) years before to 2001 rather than eleven (11) years before 1980. Further, the applicant states that she first entered the United States in October of 1981. Therefore, it is not possible that [redacted] met the applicant before that time. This letter does not provide details regarding how [redacted] met the applicant nor does it provide an address for the applicant.

Though the applicant has submitted these documents with her Form I-687, none of the letters or affidavits provide proof that those who wrote them were present in the United States during the

requisite period. There are no identity documents for those who wrote these letters and affidavits. Though some of the affidavits and letters provide information regarding how those who wrote them met the applicant, descriptions of these circumstances under which these first meetings occurred are limited to short phrases such as "at the park." Therefore, these documents are not probative and can be given minimal weight.

The inconsistencies found in the applicant's record regarding her month of entry, her number of absences, the length of time absent from the United States during the requisite period, and the dates of the applicant's absence from the United States during the requite period seriously undermine the credibility of her claim of maintaining continuous residence in the United States for that period. Further undermining the applicant's claim is that those who wrote many of the affidavits and letters submitted by the applicant claim to have met the applicant in the United States in 1980, when she claims in documents she has signed under penalty of perjury to have entered the United States in October of 1981. These inconsistencies also call into question the credibility of all documents submitted in support of such claim, many of which indicate that the longest the affiants have not seen the applicant was only one month when the applicant herself has stated that she was absent from the United States from October to December of 1987 in Colombia and also submitted documents stating that she was in Venezuela with her son in August of 1987.

Doubt cast on any aspect of the evidence may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an 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. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

In her NOID, the director noted the above, as well as stating that the applicant did not meet her burden of establishing her initial date of entry in 1981 as she could not explain how she traveled from Colombia to Mexico before arriving in the United States at that time. The director also noted the sworn statement, written and signed by the applicant that establishes that she was absent from the United States from October 1987 to December 1987. The applicant did not specify the days that she was absent from the United States during absence that occurred during the requisite period. However, as the director noted, the applicant did not meet her burden of establishing that she was not absent from the United States for more than forty-five (45) days during this absence.

The director also specified that though the applicant submitted affidavits, those submitted did not establish that the affiants were in the United States during the requisite period. The director stated that credible affidavits include documents identifying the affiants, proof that the affiants were in the United States during the statutory period and proof of a relationship between the affiant and the applicant. The director pointed out in her NOID that these documents were not provided. Though these items were specifically identified in the director's NOID, none were provided in the applicant's response to that NOID. While the director does incorrectly note that

the applicant should have provided corroborative evidence of a valid entry into the United States at the time she entered without inspection, the applicant does claim to have entered Mexico from Colombia. Therefore, it is reasonable to expect that the applicant might have documentation establishing an entry into Mexico before the date the applicant claims to have first entered the United States, particularly as the applicant did submit a copy of a document from a passport issued by the consulate of Colombia in Venezuela on January 23, 1979. However, the applicant did not supply USICS with the remaining pages of this passport nor does she supply more information regarding her initial entrance into the United States as part of her appeal.

On appeal, the applicant's attorney submitted a "Notice of Appeal" asserting that the applicant entered the United States before January 1, 1982 and that she was not able to apply for legalization during the initial filing period because she was discouraged from doing so. While the applicant's attorney correctly asserts that it is not reasonable to ask the applicant to produce documents confirming an valid and legal entry in October 1981 when the applicant claims to have entered without inspection, and while he correctly notes that one of the applicant's absences occurred after the requisite period, he does not address the applicant's 1987 absence, which did occur during the requisite period and, without further evidence to the contrary, appears to have been for more than forty-five (45) days. Further, the applicant was specifically told that the affidavits she submitted were not found credible because they did not include: documents identifying the affiant; some proof that the affiant was in the United States during the statutory period; and some proof that there was a relationship between the applicant and the affiant. However, rather than providing the specifically listed items that would have enabled the service to give greater weight to the affidavits, the applicant's attorney challenges the notion that these additional items are necessary. Though these items are not required by regulation, they would have helped to increase their relevance and establish the credibility of the affidavits. However, most important to determining the credibility of an affidavit is whether the statement of the affiant is consistent with the other evidence in the record. Here, because many of the affiants claim that the longest they have not continuously seen the applicant is one month and because the applicant states in a sworn statement that she left the United States to go to Colombia for more than one month, from October 1987 to December 1987, these affidavits are not found to be consistent with other evidence in the record.

Further casting doubt on statements made in affidavits and letters supplied with the applicant's Form I-687 are claims within these letters and affidavits that those who wrote them met the applicant in the United States in 1980, when the applicant claims not to have entered the United States until October of 1981. To meet her burden of proof, an applicant must provide evidence of eligibility apart from her own testimony. 8 C.F.R. § 245a.2(d)(6). Though the applicant did supply affidavits from individuals attesting to her maintaining continuous residence in the United States, information in these affidavits conflicts with information in the record. Therefore, these affidavits carry minimal weight.

The applicant has failed to provide any independent and objective evidence to resolve the inconsistencies noted by the director. The applicant's failure to provide any other evidence to

establish her continuous residence in the United States during the requisite period renders a finding that she has failed to satisfy her burden of proof, as required by 8 C.F.R. § 245a.2(d)(5). The applicant has not submitted sufficient evidence to establish that her claim is "probably true" pursuant to *Matter of E-M-, supra.*

The absence of sufficiently detailed supporting 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 contradictory statements on her applications and her 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 from prior to January 1, 1982 through the date she attempted to file a Form I-687 application 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.