U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: Hartford Date: JUN 07 2007

MSC 05 279 10028

IN RE: Applicant: [redacted]

PETITION: 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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter 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, Boston, Massachusetts, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The district director determined that the applicant had not demonstrated that she had continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that she attempted to file a Form I-687, Application for Status as a Temporary Resident, with the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS) in the original legalization application period between May 5, 1987 to May 4, 1988. Therefore, the district director concluded that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and denied the application.

On appeal, counsel contends that the district director was arbitrary and capricious in finding that the affidavits attesting to the applicant's continuous residence in the United States during the requisite period were insufficient. Counsel asserts that the district director failed to specify exactly what evidence fails to support the applicant's claim.

An alien 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)(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. *See* 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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to establish continuous residence in the United States from prior to January 1, 1982 through the date she attempted to file a Form I-687 application with the Service in the original legalization application period from May 5, 1987 to May 4, 1988. Here, the submitted evidence is relevant, probative, and credible.

The record shows that the applicant submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on July 6, 2005. The applicant indicated on the application that she first entered the United States on March 16, 1981, and has resided continuously in the United States since that time except for a one-month trip to Jamaica, from July 1987 to August 1987 for the purpose of visiting her son who was very ill at that time.

In support of her application, the applicant submitted an employment letter stated May 1, 1989, from [redacted], Manager of [redacted], located at [redacted] New York, New York, stating that the applicant, then residing at [redacted], Bronx, New York, worked for his corporation as a sales clerk from July 1981 to June 1985 and that she was paid $150.00 per week.

The applicant also submitted an affidavit dated April 18, 1989, from [redacted], then residing at [redacted], Rosemont, Pennsylvania, stating that the applicant had worked for her as a live-in housekeeper and child-care provider since July 1985 for a salary of $5.00 per hour. [redacted] further stated that the applicant returned to her home in New York on the weekends.

The applicant provided a letter dated May 15, 1989, from [redacted], Pastor of Greater [redacted] Baptist Church, located at [redacted] Bronx, New York, stating that the applicant had been regularly attending services at his church since January 1982.

The applicant included an affidavit dated May 14, 1989, from [redacted] stating that the applicant had been a patient of his since November of 1982.

The applicant also submitted an affidavit dated April 18, 1989, from [redacted] stating that she met the applicant, then residing at [redacted] Bronx, New York, at a wedding in the Bronx in 1981 and they had stayed in touch with each other since that time.

Additionally, the applicant provided an affidavit dated May 1, 1989, from [redacted] residing at [redacted], Bronx, New York, stating that she had known the applicant since 1981 and the applicant was living with her in her apartment. In a separate affidavit dated May 15, 1989, [redacted] stated that the applicant had been living with her since March 1981. [redacted] explained that as of the date of the affidavit, the applicant was working in Philadelphia, Pennsylvania, and coming back to New York to stay with her on weekends.

The applicant submitted an affidavit dated April 28, 1989, from [redacted] stating that he was introduced to the applicant, then residing at [redacted], Bronx, New York, by mutual friends in November 1981 and they had been good friends since that time.

During her legalization interview on January 10, 2006, the applicant told the interviewing officer that she traveled to the United States from Jamaica by ship in March 1981. She explained that a crewman on a cruise ship brought her on board the cruise ship, and concealed her presence on the ship during the trip from Jamaica to the United States. She stated that the crewman assisted her to exit the ship without immigration inspection at the port of Miami, Florida, and that she later paid him for his assistance.

In the notice of denial issued on June 14, 2006, the district director stated that the evidence submitted in support of the application and the applicant's testimony during her legalization interview failed to substantiate her claim of entry into the United States prior to January 1, 1982.

On appeal, counsel contends that the district director's decision was arbitrary and capricious because the district director failed to state with specificity the reason the applicant's testimony and the evidence submitted in support of her claim were insufficient to establish her continuous residence in the United States during the requisite period. Counsel submits a statement from the applicant reiterating her claim of entry into the United States without inspection on March 16, 1981. The applicant explains that a crewman on a cruise ship hid her on the ship and assisted her in leaving the ship without inspection by an immigration officer at the port of Miami, Florida. She indicates that she later sent him $1500 in payment for his services. The applicant states that she stayed in Miami, Florida, for about two weeks with her friend [redacted] and her husband and then traveled from Florida to New York City by bus. She further states that when she arrived in New York, she stayed with her friend [redacted] then residing at [redacted], Bronx, New York, and continued to live with [redacted] "off and on" until July 1992, when she moved to Connecticut permanently. Finally,

the applicant states that she is now married to a naturalized United States citizen and has a son born in this country.

Counsel submits photocopies of documents previously submitted in support of the application and an affidavit dated May 15, 2006, from [redacted] of St. Mary, Jamaica, stating that she has personal knowledge that the applicant entered the United States in March of 1981 because the applicant stayed with her and her husband at their apartment in Miami, Florida for a week prior to leaving for New York.

The applicant's testimony throughout this proceeding has been consistent. Furthermore, the affidavits and letters submitted by the applicant in support of her claim are consistent with each other and with the applicant's testimony on the Form I-687 and during the legalization interview.

Pursuant to *Matter of E-M-, id*, affidavits in certain cases can effectively meet the preponderance of evidence standard, and the district director cannot simply refuse to consider such evidence merely because it is unaccompanied by other forms of documentation. The district director has not established that the information in this evidence was inconsistent with the claims made on the application, or that it was false information. As stated in *Matter of E-M-, id*, when something is to be established by a preponderance of evidence, the applicant only has to establish that the proof is probably true. That decision also points out that, under the preponderance of evidence standard, an application may be granted even though some doubt remains regarding the evidence. The documents that have been furnished 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 documentation provided by the applicant supports by a preponderance of the evidence that the applicant satisfies the statutory and regulatory criteria of entry into the United States before January 1, 1982, as well as continuous unlawful residence in the country during the ensuing time frame of January 1, 1982 through May 4, 1988, as required for eligibility for legalization under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M-, id.*

Accordingly, the applicant's appeal will be sustained. The district director shall continue the adjudication of the application for temporary resident status.

**ORDER:** The appeal is sustained.