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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: NEW YORK Date: NOV 14 2007

MSC 05 313 13263

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:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the National Benefits Center. 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, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined that the applicant failed to demonstrate that she 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 of May 5, 1987 to May 4, 1988. Therefore, the director determined 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 asserts that the applicant provided sufficient proof of her eligibility under the program in the form of several affidavits. Counsel also asserts that the applicant was continuously physically present in the United States during the requisite period with only brief absences.

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 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 applicant 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 applicant 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 and 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 regulation at 8 C.F.R. § 245a.2(d)(3)(v) states that letters from churches, unions or other organizations attesting to the applicant's residence must: identify the applicant by name; be signed by an official whose title is shown; show inclusive dates of membership; state the address where the applicant resided during membership period; include the seal of the organization impressed on the letter or the letterhead of the organization; establish how the author knows the applicant; and establish the origin of the information being attested to.

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

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.

In a June 22, 2006, Notice of Intent to Deny, the director stated that the applicant had not demonstrated eligibility for the benefit sought. The applicant submitted no documents or corroborative evidence of her entry into the United States in April of 1981. Nor did the applicant submit any credible evidence to establish her continuous unlawful residence from such date through May 4, 1988. During an interview, the applicant testified to leaving the United States in January of 1987 and returning in February of 1989. The director noted that the applicant's absence interrupted her continuous unlawful residence. The director also noted that the applicant provided contradictory testimony that indicated she did not file or attempt to file a Form I-687 between May 5, 1987 and May 4, 1988.

In response to the Notice of Intent to Deny, counsel rebutted with the following explanations:

3) [redacted] entered the United States from Canada in April 1981 without inspection. As [redacted] which is in the commonwealth, she did not need a visa to enter Canada then. She had a passport which she used to enter Canada. She is no longer in possession of her original passport, which she lost several years ago.

4) Your reference to "absences between January 1987 to February of 1989" indicating that the applicant had broken her continuous unlawful residence was incorrect. Applicant had traveled briefly for two weeks to Canada on February 12, 1987 and returned to the United States on February 26, 1987. Then in January 1989, applicant traveled to Malaysia and returned to the United States on February 2, 1989. These two absences do not exceed forty-five days as the Intent to Deny suggest.

5) Applicant had answered "No" to question numbered 14 on the Form I-687 because, even though she had the application completed and ready to be filed, it was rejected and never received by the Service. Thus, applicant indicated "No" since there was no record with the Immigration office.

Counsel also provided a list of the applicant's addresses since her entry on April 7, 1981, and previously submitted affidavits. Counsel also stated that the applicant submitted New York identification cards and pictures to support her application. The record reflects a photocopy of the applicant's New York identification card, but does not reflect any other identification cards or any pictures. The identification card was issued on June 1, 2005.

In a July 26, 2006, Notice of Decision, the director determined that the documentation was insufficient to overcome the grounds for denial. The director stated that the affidavits were not credible or amenable to verification. The director also stated that the documentation did not overcome the fact that the applicant interrupted her continuous physical presence in the United States when she was absent from January of 1987 to February of 1989.

On appeal, counsel stated that the eight affidavits, submitted in support of the applicant's claim of continuous residence in the United States during the relevant period, are credible and amenable to verification with addresses and telephone numbers. Counsel reiterated that the applicant's absences consisted of two brief absences from February 12, 1987, to February 26, 1987, and January 1989 to February 1989, neither of which exceeded forty-five (45) days.

At issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that she resided in the United States from prior to January 1, 1982, through the date she attempted to file a Form I-687 application with CIS in the original legalization application period of May 5, 1987 to May 4, 1988. Here, the submitted evidence is not relevant, probative, and credible.

The record reflects the following evidence:

1) A December 9, 2005, letter by [redacted] who stated that he/she had known the applicant for more than 15 years. They met at a friend's birthday party and have kept in touch since that time. The record reflects that the affiant has known the applicant since 1985. The affiant provided an address and phone number to be contacted at for further information.

2) A July 12, 2006, letter by [redacted] who stated that he/she had known the applicant since 1986 when they met at a friend's house in New York.

3) A November 30, 2005 letter by [redacted] who stated that the applicant rented an apartment at [redacted] Elmhurst, New York, for up to five (5) years. He provided the same address and a phone number for verification.

4) A July 10, 2006, letter by [redacted] Founder of Elmhurst Christian Gospel Church. [redacted] that, as far as he knows, the applicant has been residing in the United States since the early 1980s. He also stated that the applicant started attending his church shortly after it was founded in May 1997. He noted that the applicant attends both the Friday night fellowship and Sunday worship services on a fairly regular basis.

5) A December 3, 2005, letter by [redacted] who stated that she has known the applicant since 1989. She stated that the applicant came regularly to help with household chores, as well as help prepare dishes when the affiant had company. [redacted] provided an address to be contacted at for further information.

6) A July 17, 2006, letter by [redacted] who stated that the applicant has worked for him/her for over seven years. The record reflects that the applicant has worked for the affiant since 1999.

7) A December 1, 2005 [redacted] who stated that the applicant had worked for him and his wife as a domestic employee for a number of years. The letter contained the affiant's address in New York, which is also the applicant's address.

8) A December 4, 2005, letter [redacted] who stated that the he met the applicant in the early 1980s, and has remained friends ever since. He further stated that the applicant left him small gifts of fruit without any thought of recompense on his part. She also performed little chores for him that ingratiated her to his apartment staff.

9) An undated copy of a letter by [redacted] the applicant's sister, who certified that the applicant left Malaysia for the United States in April 1981. The affiant provided her contact information in Malaysia.

10) An undated statement by the applicant, who stated that she first entered the United States without inspection on April 7, 1981, through New York. She left the United States on February 12, 1987, to visit close friends in Canada. She returned to the United States on February 26, 1987. In January 1988, she attempted to file her application under the amnesty program, but was told she did not qualify due to her brief travel outside the United States. She traveled to Malaysia in March of 1991 and in August of 1994 due to a family emergency and returned with a visa. She further stated that except for her brief absences in 1987, 1991, and 1994, she never traveled outside the United States.

The above affidavits do not establish that the applicant entered prior to January 1, 1982, nor that she resided in the United States from such date through the date she attempted to file a Form I-687 application with CIS. The affidavits of [redacted] failed to provide any detailed testimony regarding the applicant's date of entry into the United States, or to confirm the applicant's presence in the United States throughout the statutory time period. They did not claim any first-hand knowledge of the applicant's residence in the United States prior to 1985.

The affidavits of [redacted] as well as the affidavit of [redacted] stated that they met the applicant after the requisite period. In addition, affidavit failed to state the address where the applicant resided during the entire membership period and to establish the origin of the information being attested to as required under 8 C.F.R. § 245a.2(d)(3)(v).

[redacted] stated that the applicant worked for them at one point. The affidavits of [redacted] and [redacted] stated that the applicant worked for them after 1999. [redacted] failed to indicate any time period of employment. All the affiants failed to provide the applicant's address at the time of employment, the identify the exact period of employment, show periods of layoff, declare whether the information was taken from records, and identify the location of such records and state whether such records are accessible or in the alternative state the reason why such records are unavailable as required under 8 C.F.R. § 245a.2(d)(3)(i).

The affidavit of [redacted] the applicant's sister, did not provide detailed testimony regarding the applicant's exact date or method of entry into the United States, or confirm the applicant's presence in the United States throughout the statutory time period. The letter by [redacted] merely stated that the applicant left for the United States in April of 1981. It failed to provide any corroborating information about the exact date the applicant entered the United States or the method of entry.

The applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981 to 1988 period. None of the affidavits included any supporting documentation of the affiant's identity or presence in the United States. The absence of sufficiently detailed and consistent 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 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.

Moreover, the director referenced an interview in which the applicant testified that she traveled outside the United States from January of 1987 to February of 1989. In response to the Notice of Intent to Deny, counsel stated that this was an incorrect statement and the applicant had, in fact, taken two brief absences from February 12, 1987 to February 26, 1987, and January 1989 to February 1989, neither of which exceeded forty-five (45) days. Counsel reiterated this statement on appeal. However, this is inconsistent with the applicant's statements. The record reflects that the applicant submitted a Form I-687 application to CIS on July 29, 2005. At part #32 of the Form I-687 application where applicants were asked to list all absences from the United States since entry, the applicant listed absences in 1987, 1991, and 1994. In an undated statement, the applicant repeatedly indicated absences in 1987, 1991 and 1994. She further stated that except for these absences, she never traveled outside the United States. The applicant made no reference to an absence in 1989.

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The record contains no independent objective evidence to explain the omission of the applicant's 1989 absence from the United States in her Form I-687 and subsequent statement.

A few errors or minor discrepancies are not reason to question the credibility of an alien or an employer seeking immigration benefits. *See*, e.g., Spencer Enterprises Inc. v. U.S., 345 F.3d 683, 694 (9th Cir., 2003). However, anytime an application includes numerous errors and discrepancies, and the applicant fails to resolve those errors and discrepancies after CIS provides an opportunity to do so, those inconsistencies will raise serious concerns about the veracity of the applicant's assertions. Since the applicant and counsel are inconsistent with regard to the applicant's absences from the United States, the applicant's credibility is brought into question.

Therefore, based on the above, the applicant 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*. Accordingly, the applicant is ineligible for temporary resident status under section 245A of the Act.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.