U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529

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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: LOS ANGELES Date: AUG 15 2008

MSC 06 077 13260

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.

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, California. 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 December 16, 2005. The applicant was interviewed by a Citizenship and Immigration Services (CIS) officer on April 25, 2006 and was requested to submit further evidence. Upon review of the record including the response to the request for further evidence, the director denied the application on September 25, 2006 and mailed the decision on October 3, 2006. The director found 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, the applicant submits a statement, an additional affidavit, and other information.

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 applicant attempted to file the application. 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 or attempting to file the application. 8 C.F.R. § 245a.2(b)(1).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "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 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).

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).

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 evidence to establish her entry into the United States prior to January 1, 1982 and continuous unlawful residence since such date through the date she attempted to file the application.

On the Form I-687, the applicant indicated she also uses the name At the interview on April 25, 2006, the applicant indicated that she had also used the name The applicant further indicated that she had last entered the United States in June 1987. The applicant listed her address for the pertinent time period as: [redacted] Los Angeles, California from 1980 to 1987. The applicant's next address on the Form I-687 is for a residence in 1989, after the applicable time period. The applicant does not list employment on the Form I-687 until a time period in 1986 when she was employed at the Inglewood Park Cemetery and her next employment beginning in 1989. The applicant indicates she left the United States in May of 1987 to return to Mexico because of "domestic violence" and returned to the United States in June 1987.

In a December 6, 2005 statement, the applicant, using the name [redacted], declares that she entered the United States in 1980 and that she left the United States in May 1987 with her two children to escape an abusive relationship. She declares that she returned to the United States in June 1987 and when she returned her younger brother took her to the immigration offices to "apply" but she was turned away because of her absence from the United States.

The record also includes several statements and affidavits that contain the following information regarding the pertinent time period and relating to the adjudication of the applicant's Form I-687 including:

- An undated statement signed by [redacted] the applicant's sister, stating that the applicant came to the United States with the declarant "in the year 1980 with

her son [redacted] and [redacted]" a second statement dated December 1, 2005 signed by [redacted] stating that the applicant left the United States in 1987 to escape an abusive relationship. The declarant indicates that the applicant took her two sons and her daughter with her to Mexico and came back a few months later, at which time the declarant and applicant's younger brother took the applicant to the immigration offices where she was told she could not "apply."

- A December 1, 2005 statement signed by [redacted] who states that he has known the applicant since 1980 and that he met her in the City of Los Angeles, California through [redacted].
- A December 1, 2005 statement signed by [redacted] who states that he has known the applicant since 1980 and that he met her in the City of Los Angeles, California through some family members.
- A December 1, 2005 statement signed by [redacted] who states that he has known the applicant since 1980 and that he met her in the City of Los Angeles, California through family relations.
- A December 1, 2005 statement signed by [redacted] who states that he has known the applicant since 1984 and that he met her in the City of Los Angeles, California through [redacted].
- An October 26, 2006 affidavit signed by [redacted], submitted on appeal, who declares: that he has known the applicant since January 1987; that the applicant and her three children started to live with him around this time; that the applicant started to live with him because her ex-husband, [redacted] abused her and the children verbally and physically; and that the children did not attend school because the applicant's ex-husband harassed and threatened the applicant and her children and she was afraid to let the children attend school; and that he has known the applicant and her children for a long time.

The record also contains the applicant's marriage certificate to [redacted] in November 1974; a July 27, 1982 grant deed issued to three couples including [redacted] and [redacted] his wife, for property in Los Angeles, California; photocopies of envelopes showing the return addressee as [redacted] with addresses in California bearing postmarks in 1981 and 1982; a 1986 Internal Revenue Service (IRS) Form 1099-Misc, Miscellaneous Income, issued to the applicant by Inglewood Park Cemetery; and a birth certificate for [redacted] born August 17, 1986 in the State of California.

The record further includes information regarding the applicant's children, [redacted] and [redacted] and their schooling in the United States including:

- A November 17, 2005 letter signed by an office assistant at South Park Elementary, Los Angeles, California indicating the dates of enrollment for the applicant's son, [redacted], born February 11, 1976 in Mexico, as September 14, 1982 to January 20, 1987.

- A November 21, 2005 letter signed by an office assistant at South Park Elementary, Los Angeles, California indicating the applicant's son, [redacted], born February 11, 1976 in Mexico, was enrolled in South Park Elementary on September 14, 1982, coming from Micheltorena Elementary School within the LAUSD; that [redacted] left South Park Elementary transferring to Mother of Sorrows, a private school; returned to South Park Elementary on September 10, 1986; and left South Park Elementary on January 20, 1987; and that South Park Elementary received a student cumulative record request from Sixty-Eighth Street Elementary School, LAUSD that was mailed on September 12, 1989.
- A cumulative pupil record on the letterhead of the Archdiocese of Los Angeles Elementary Schools for [redacted] indicating the school name as "Mother of Sorrows," showing the pupil was enrolled in Mother of Sorrows on September 3, 1985 in first grade and withdrew on June 15, 1986.
- An April 24, 2006 letter signed by an office assistant at South Park Elementary, Los Angeles, California indicating the applicant's daughter [redacted] born November 8, 1979 in Mexico, was enrolled as a new kindergarten student on September 11, 1984; that she left the school around June 1985 to enroll at Mother of Sorrows Elementary, a private school; that she returned to South Park Elementary on September 10, 1986; and left South Park Elementary on January 20, 1987.
- An August 16, 2006 letter signed by the principal of the Sixty-Eighth Street Elementary School in Los Angeles, California indicating that [redacted] attended 68th Street School from November 19, 1988 to June 23, 1989 and that he had transferred from Mother of Sorrow Elementary School.

The record includes other school records for [redacted] pertaining to years outside the requisite time period.

On September 25, 2006 in a decision mailed October 3, 2006, the director found that the school records for the applicant's children were sketchy; that the school records do not demonstrate that the children attended school prior to September of 1982 or attended school between January 1987 and November 1988; that the applicant's sister in her December 1, 2005 declaration stated that the applicant had left the United States in 1987 and came back "a few months later;" and that the other declarations submitted were not supported by corroborating evidence. The director determined that the applicant had failed to meet her burden of proof by a preponderance of the evidence that she had resided continuously in the United States for the requisite period and that she had continuous physical presence in the United States from November 6, 1986 through the date the application was considered filed. The director found the applicant ineligible to adjust status under section 245A of the Act.

On appeal, the applicant asserts: that she came to the United States in November 1980. that she immediately enrolled the children in school; that she started working under the name [redacted] that in the last months of 1986 she was abused by her husband; that she moved from place to place to avoid her husband; that she decided not to send the children to school for fear he would find them; that during this time period she left for Mexico, but her husband found her and the children so she returned to

the United States right away; and that in November of 1988 she moved in with her brother and feeling more secure that her husband had left California allowed the children to return to school. As noted above, the applicant submits the October 26, 2006 affidavit signed by [redacted]. The applicant also notes that she does not have other evidence to prove her residence during the missing two years.

The AAO has reviewed the declarations initially provided and finds that the statements of [redacted] and [redacted] do not provide any information establishing that the applicant continuously resided in the United States for the requisite time period. The declaration of the applicant's sister indicates that the applicant may have resided outside the United States for more than 45 days during the requisite time period and conflicts with the applicant's statement that she left the United States only from May 1987 to June 1987. The applicant has provided a general statement regarding her attempt to file an application for legalization. The record does not contain any statements with a more definitive date regarding her attempt to file an application for legalization during the May 4, 1987 to May 4, 1988 time period, other than some time after she returned to the United States in June 1987.

The AAO acknowledges that the applicant has provided sufficient indicia that she was residing in the United States in July 1982 as demonstrated by the July 27, 1982 grant deed and further demonstrated by the applicant's son's enrollment in school in September 1982. However, the record does not contain sufficient evidence establishing the applicant's entry into the United States prior to January 1, 1982. In addition, the applicant's absence from the United States in 1987 is not sufficiently detailed and the absence of the children from school tends to corroborate the applicant's sister's statement that the applicant was outside the United States for several months in 1987. The AAO acknowledges the affidavit of [redacted] and the applicant's assertions on appeal. However, [redacted] does not provide the address where he contends that the applicant lived while living with him. Likewise, he does not sufficiently describe the time period, instead declaring that he has known the applicant for a long time and that he has known the applicant since January 1987 and it was around this time period that the applicant began to live with him. Mr. [redacted] does not mention the applicant's absence from the United States in May or June of 1987. In addition, the applicant does not address why she did not include [redacted] address on her Form I-687, instead of leaving a gap between her U.S. residences from July 1987 to 1989. The record in this matter is insufficient to establish that the applicant entered the United States prior to January 1, 1982 and continuously resided in the United States in an unlawful status from January 1, 1982 to July 1982 and between January 20, 1987 to the date she attempted to file the application or was physically present in the United States from January 20, 1987 to the date she attempted to file the application.

When viewed as a whole, the information in the record lacks the necessary detail to substantiate the applicant's entry into the United States prior to January 1, 1982 and continuous unlawful residence in the United States for the requisite time period. The deficient declarations and affidavit submitted comprise the only evidence of the applicant's residence in the United States from prior to January 1, 1982 through the requisite time period. This information lacks credibility and probative value for the reasons above noted. The absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of her 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. The applicant has failed to meet her burden of proof and 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. The appeal will be dismissed.

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